IOWA ADMINISTRATIVE BULLETIN

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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Iowa Administrative Bulletin

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Attn: Nicole Navara
Legislative Services Agency
Miller Building
Des Moines, IA 50319
Telephone: (515)281-6766

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making
2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
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Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
9	**Friday, October 6, 2006**	**October 25, 2006**
10	**Friday, October 20, 2006**	**November 8, 2006**
11	**Friday, November 3, 2006**	**November 22, 2006**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.west@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 10, 2006, at 9 a.m. in Room 22 and on Wednesday, October 11, 2006, at 8:30 a.m. in Room 102, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

DEAF SERVICES DIVISION[429]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"
Standing committees of the commission on the deaf,
1.3(5), Filed **ARC 5394B** 9/27/06

DENTAL EXAMINERS BOARD[650]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Continuing education credit for Iowa jurisprudence courses,
25.3(7)"b," Notice **ARC 5405B** 9/27/06
Deep sedation/general anesthesia and conscious sedation permits,
29.3(1) to 29.3(7), 29.4(1) to 29.4(6), 29.4(9), 29.5, 29.5(4),
29.5(6) to 29.5(8), 29.10(2)"c," Notice **ARC 5406B** 9/27/06

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Air quality, 20.1, 22.4, 22.6, ch 33, Filed **ARC 5388B** 9/27/06
Commercial septic tank cleaners, ch 68, 69.17, 69.17(1), Filed **ARC 5389B** 9/27/06
Discarded appliance demanufacturing, ch 118, Notice **ARC 5387B** 9/27/06
Mercury-added switch recovery from end-of-life vehicles,
ch 215, Notice **ARC 5386B** 9/27/06

HUMAN SERVICES DEPARTMENT[441]
Dependent adult abuse reports—granting extensions of time, access to information,
176.6(5), 176.10(3), Notice **ARC 5392B** 9/27/06

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Unfair trade practices—limitations on gifts and loans, disclosure of HIV test results,
15.8, 15.8(2)"b," 15.8(5), 15.12(2), 15.12(3),
ch 15 appendix II, Notice **ARC 5409B** 9/27/06
Insurance rate and form filing procedures; surplus lines requirements,
ch 21 title, 21.1 to 21.8, 21.10, Notice **ARC 5408B** 9/27/06
Viatical and life settlements, 48.3(2)"e," 48.3(6), 48.3(7), 48.3(7)"b,"
48.3(8) to 48.3(10), 48.8(3), 48.9(4), Notice **ARC 5407B** 9/27/06
Conduit derivative transactions, ch 93, Filed **ARC 5410B** 9/27/06

IOWA FINANCE AUTHORITY[265]
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"
Low-income housing tax credit program—2007 qualified allocation plan,
12.1, 12.2, Filed **ARC 5381B** 9/13/06
Low-income housing tax credit program—compliance manual,
12.3, 12.4, Notice **ARC 5289B**, Terminated **ARC 5376B** 9/13/06

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
Benefits, 4.1(1)"d," 4.3(1), 4.3(3), 4.6(1)"c," 4.6(5) to 4.6(8), 6.3(13),
11.2(5), 11.5(2), 12.1(6)"f"(4), 12.1(7), 12.2(1), 12.8(2)"c," 12.8(3),
14.14, 15.2(1), 15.2(5), Notice **ARC 5401B** 9/27/06

LABOR SERVICES DIVISION[875]
WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"
Construction contractor registration, 150.3, 150.7, Notice **ARC 5391B** 9/27/06

MEDICAL EXAMINERS BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Open records, 24.2(5)"e," 24.2(9), 25.3(5), 25.17(5), 25.24(1), 25.29(2)"a,"
25.32, Filed Emergency **ARC 5379B** 9/13/06

NATURAL RESOURCES DEPARTMENT[561]
Rules of practice in contested cases, ch 7, Notice **ARC 5385B** 9/27/06

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PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Discipline, 4.11(2), 4.16(2), 4.31(3), Filed **ARC 5412B** 9/27/06

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Notification of patients regarding permanent pharmacy closure, 8.35(7)"b" to "e," Notice **ARC 5398B** 9/27/06
Disciplinary action—failure to provide records, 36.1(4)"ag," Notice **ARC 5397B** 9/27/06

PUBLIC SAFETY DEPARTMENT[661]
Weapons permits, 4.1 to 4.12, ch 91, Notice **ARC 5396B** 9/27/06
Disposition of seized and forfeited weapons and ammunition, 4.51 to 4.59, ch 95, Notice **ARC 5395B** 9/27/06
Fire marshal; general fire safety; fire safety for specific occupancies; smoke detectors, ch 5 title, 5.16, 5.35, 5.40, 5.42, 5.50, 5.51, 5.100 to 5.105, 5.230, 5.301, 5.607 to 5.613, 5.650 to 5.661, 5.663 to 5.667, 5.675, 5.749 to 5.759, 5.761 to 5.765, 5.775, 5.800 to 5.806, chs 201, 202, 210, Notice **ARC 5375B** 9/13/06
Devices and methods to test body fluids for alcohol or drugs, ch 7 title, 7.1 to 7.7, 7.8(1)"c," 7.8(2), 7.8(13), 7.9, ch 155, Notice **ARC 5373B** 9/13/06
Criminal intelligence information, 8.201 to 8.207, ch 81, Notice **ARC 5378B** 9/13/06
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Missing person information clearinghouse, chs 19, 89, Notice **ARC 5393B** 9/27/06
State building code, ch 300, 301.1 to 301.4, 301.6(1), 301.7, 301.8, Notice **ARC 5404B** 9/27/06
State historic building code, 350.1, Notice **ARC 5402B** 9/27/06
Manufactured or mobile home retailers, manufacturers and distributors, ch 372, Notice **ARC 5403B** 9/27/06

REVENUE DEPARTMENT[701]
School tuition organization tax credit, 42.30, Filed **ARC 5411B** 9/27/06

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Special elections in cities with or without primary election requirements, 21.403, 21.404, Filed Emergency **ARC 5390B** 9/27/06

TREASURER OF STATE[781]
Linked investments for tomorrow (LIFT), 4.1 to 4.11, Notice **ARC 5383B**, also Filed Emergency **ARC 5384B** 9/13/06

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Delegation of authority to issue procedural orders, 7.1(8), Filed **ARC 5380B** 9/13/06
Wind and renewable energy tax credits, 15.18(1), 15.18(4), 15.18(6), 15.19(1), 15.19(4) to 15.19(6), 15.20, 15.21, Notice **ARC 5400B** 9/27/06
Gas and electric line extension rules, 19.3(10), 19.3(11), 20.3(13), 20.3(14), Notice **ARC 5382B** 9/13/06

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.
EDITOR'S NOTE: Terms ending April 30, 2007.

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Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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Continuing education, 25.3(7) IAB 9/27/06 **ARC 5405B**	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 17, 2006 2 p.m.
Deep sedation/general anesthesia and conscious sedation, 29.3 to 29.5, 29.10(2) IAB 9/27/06 **ARC 5406B**	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 17, 2006 2 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Housing fund, ch 25 IAB 8/30/06 **ARC 5336B**	NW Conference Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	September 28, 2006 1:30 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Discarded appliance demanufacturing, ch 118 IAB 9/27/06 **ARC 5387B**	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 17, 2006 9 a.m.
Mercury-added switch recovery from end-of-life vehicles, ch 215 IAB 9/27/06 **ARC 5386B**	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 17, 2006 8:30 a.m.
INSURANCE DIVISION[191]		
Unfair trade practices, 15.8, 15.12 IAB 9/27/06 **ARC 5409B**	330 Maple St. Des Moines, Iowa	October 18, 2006 10 a.m.
Surplus lines requirements, amendments to chs 20, 21 IAB 9/27/06 **ARC 5408B**	330 Maple St. Des Moines, Iowa	October 18, 2006 1 p.m.
Viatical and life settlements, 48.3, 48.8(3), 48.9(4) IAB 9/27/06 **ARC 5407B**	330 Maple St. Des Moines, Iowa	October 17, 2006 9 a.m.
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]		
Benefits, amendments to chs 4, 6, 11, 12, 14, 15 IAB 9/27/06 **ARC 5401B**	7401 Register Dr. Des Moines, Iowa	October 17, 2006 9 a.m.
LABOR SERVICES DIVISION[875]		
Construction contractor registration, 150.3, 150.7 IAB 9/27/06 **ARC 5391B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	November 1, 2006 9 a.m. (If requested)

NATURAL RESOURCE COMMISSION[571]

Game management areas, 51.1, 51.3(2), 51.4 to 51.12 IAB 8/30/06 **ARC 5353B**	Fourth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	September 27, 2006 10 a.m.
Recreation trails, 67.1 to 67.9 IAB 8/30/06 **ARC 5352B**	Fourth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	September 27, 2006 10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Weapons permits, rescind 4.1 to 4.12; adopt ch 91 IAB 9/27/06 **ARC 5396B**	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 20, 2006 10 a.m.
Disposition of seized and forfeited weapons and ammunition, rescind 4.51 to 4.59; adopt ch 95 IAB 9/27/06 **ARC 5395B**	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 20, 2006 10:30 a.m.
Fire safety requirements, amend ch 5; adopt chs 201, 202, 210 IAB 9/13/06 **ARC 5375B** **(ICN Network)**	Third Floor Conference Room Wallace State Office Bldg. 502 E. Ninth St. Des Moines, Iowa	October 12, 2006 10:30 a.m. to 12 noon
	Room 122 Emmetsburg High School Second and King St. Emmetsburg, Iowa	October 12, 2006 10:30 a.m. to 12 noon
	Room 550, Fifth Floor Department of Human Services 411 Third St. SE Cedar Rapids, Iowa	October 12, 2006 10:30 a.m. to 12 noon
	Mount Pleasant High School 2104 S. Grand Mount Pleasant, Iowa	October 12, 2006 10:30 a.m. to 12 noon
	Turner Room Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	October 12, 2006 10:30 a.m. to 12 noon
	Room 1, Altoona Public Library 700 8th Ave. SW Altoona, Iowa	October 17, 2006 6:30 to 8 p.m.
	Room 818 Iowa Lakes Community College 1900 N. Grand Ave. Spencer, Iowa	October 17, 2006 6:30 to 8 p.m.
	Room 106A George Washington High School 2205 Forest Drive SE Cedar Rapids, Iowa	October 17, 2006 6:30 to 8 p.m.

PUBLIC SAFETY DEPARTMENT[661] (Cont'd)

	New London Jr-Sr High School 101 Jack Wilson Dr. New London, Iowa	October 17, 2006 6:30 to 8 p.m.
	Room 211 Orient-Macksburg Sr. High School Orient, Iowa	October 17, 2006 6:30 to 8 p.m.
Devices and methods to test body fluids for alcohol or drug content, 7.1 to 7.9; ch 155 IAB 9/13/06 **ARC 5373B**	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 5, 2006 10:30 a.m.
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Complaint against employee, rescind ch 9; adopt ch 35 IAB 9/13/06 **ARC 5377B**	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 5, 2006 9:30 a.m.
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Missing person information clearinghouse, rescind ch 19; adopt ch 89 IAB 9/27/06 **ARC 5393B**	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 20, 2006 9:30 a.m.
State building code, amendments to chs 300, 301 IAB 9/27/06 **ARC 5404B**	Conference Room, Suite N 401 SW 7th St. Des Moines, Iowa	October 24, 2006 10 a.m.
State historic building code, 350.1 IAB 9/27/06 **ARC 5402B**	Conference Room, Suite N 401 SW 7th St. Des Moines, Iowa	October 26, 2006 10:30 a.m.
Manufactured or mobile home retailers, manufacturers, and distributors, ch 372 IAB 9/27/06 **ARC 5403B**	Conference Room, Suite N 401 SW 7th St. Des Moines, Iowa	October 26, 2006 10 a.m.

UTILITIES DIVISION[199]

Wind and renewable energy tax credits, 15.18 to 15.21 IAB 9/27/06 **ARC 5400B**	Hearing Room 350 Maple St. Des Moines, Iowa	November 7, 2006 10 a.m.
Gas and electric line extensions, 19.3(10), 20.3(13) IAB 9/13/06 **ARC 5382B**	Hearing Room 350 Maple St. Des Moines, Iowa	November 14, 2006 10 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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ARC 5405B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 25, "Continuing Education," Iowa Administrative Code.

The amendment allows licensees or registrants to obtain continuing education credit for courses in Iowa jurisprudence.

This amendment is not subject to waiver or variance pursuant to 650—Chapter 7, as it expands the list of acceptable courses that licensees or registrants may choose to take.

Any interested person may make written comments or suggestions on the proposed amendment on or before October 17, 2006. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to Jennifer.Hart@iowa.gov.

Also, there will be a public hearing on October 17, 2006, beginning at 2 p.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

This amendment was approved at the August 25, 2006, meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 17A, 147 and 153.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **25.3(7)**, paragraph **"b,"** as follows:

b. Unacceptable subject matter includes personal development, business aspects of practice, personnel management, government regulations, insurance, collective bargaining, and community service presentations. While desirable, those subjects are not applicable to dental skills, knowledge, and competence. Therefore, such courses will receive no credit toward renewal. The board may deny credit for any course. Courses in patient treatment record keeping, risk management, communication, and OSHA regulations are acceptable subject matter. *A course on Iowa jurisprudence that has been prior-approved by the board is also acceptable subject matter.*

ARC 5406B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

These amendments clarify training, facility, and equipment requirements for applicants for deep sedation/general anesthesia and conscious sedation permits. The amendments also increase the amount that the Board may recoup for the cost of an on-site evaluation of the facility where sedation services are provided. Only actual costs will be assessed, up to a maximum of $500.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, application fees are not subject to waiver pursuant to 650—15.9(17A,147,153,272C).

Any interested person may make written comments or suggestions on the proposed amendments on or before October 17, 2006. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to Jennifer.Hart@iowa.gov.

Also, there will be a public hearing on October 17, 2006, beginning at 2 p.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the August 25, 2006, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147, 153, and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrules 29.3(1) to 29.3(7) as follows:

29.3(1) No change.

a. No change.

b. Has formal training in airway management; ~~or~~ *and*

c. Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board~~; or~~ .

~~d. Is a diplomate of the American Board of Oral and Maxillofacial Surgery; or~~

~~e. Is eligible for examination by the American Board of Oral and Maxillofacial Surgery; or~~

DENTAL EXAMINERS BOARD[650](cont'd)

~~f. Is a member of the American Association of Oral and Maxillofacial Surgeons; or~~

~~g. Is a Fellow of the American Dental Society of Anesthesiology.~~

~~**29.3(2)** When an applicant has not met the above requirements, the applicant must complete a remedial training program in anesthesiology and related academic subjects beyond the undergraduate dental school level. The remedial training program must be prior approved by the board. The applicant may be subject to professional evaluation as part of the application process. The professional evaluation shall be conducted by the Anesthesia Credentials Committee and include, at a minimum, evaluation of the applicant's knowledge of case management and airway management.~~

~~**29.3(3)**~~ ***29.3(2)*** A dentist using deep sedation/general anesthesia shall maintain a properly equipped facility. The ~~facility shall maintain and the~~ dentist shall *maintain and* be trained on the following equipment *at each facility where sedation is provided*: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. ~~The facility shall be staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia.~~ A licensee may submit a request to the board for ~~waiver of~~ *an exemption from* any of the provisions of this subrule. ~~Waiver~~ *Exemption* requests will be considered by the board on an individual basis, and shall be granted only if the board determines that there is a reasonable basis for the ~~waiver~~ *exemption*.

29.3(3) *The dentist shall ensure that each facility where sedation services are provided is staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.*

29.3(4) A dentist administering deep sedation/general anesthesia must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course ~~and the auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support~~.

29.3(5) A dentist who is performing a procedure for which deep sedation/general anesthesia was induced shall not administer the general anesthetic and monitor the patient without the presence and assistance of at least two qualified auxiliary personnel in the room who are qualified under subrule ~~29.3~~(4) *29.3(3)*.

29.3(6) No change.

29.3(7) A licensed dentist who has been utilizing deep sedation/general anesthesia in a competent manner for the five-year period preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in *29.3(2)*, 29.3(3), 29.3(4), and 29.3(5).

ITEM 2. Amend subrules 29.4(1) to 29.4(6) as follows:

29.4(1) A permit may be issued to a licensed dentist to use conscious sedation on an outpatient basis for dental patients provided the dentist meets the following requirements:

a. Has successfully completed *a training program approved by the board that meets* Parts I and III of the American Dental Association Council on Dental Education Guidelines; and

b. Has formal training in airway management; or

c. Has submitted evidence of successful completion of conscious sedation experience at the graduate level, which is approved by the board. ~~The applicant shall document this experience by specifying the type of experience; the number of hours; the length of training; and the number of patient contact hours including documentation of the number of supervised conscious sedation cases; or~~

~~d. Has successfully completed a formal training program, approved by the board, which included physical evaluation, IV sedation, airway management, monitoring, basic life support and emergency management.~~

~~**29.4(2)** When an applicant has not met the above requirements, the applicant must complete a remedial training program in conscious sedation and related academic subjects beyond the undergraduate dental school level. The remedial training program shall be prior approved by the board. The applicant may be subject to professional evaluation as part of the application process. The professional evaluation shall be conducted by the anesthesia credentials committee and include at a minimum the evaluation of the applicant's knowledge of case management and airway management.~~

~~**29.4(3)**~~ ***29.4(2)*** A dentist utilizing conscious sedation shall maintain a properly equipped facility. The ~~facility shall maintain and the~~ dentist shall *maintain and* be trained on the following equipment *at each facility where sedation is provided*: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. ~~The facility shall be staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia.~~ A licensee may submit a request to the board for ~~waiver of~~ *an exemption from* any of the provisions of this subrule. ~~Waiver~~ *Exemption* requests will be considered by the board on an individual basis, and shall be granted only if the board determines that there is a reasonable basis for the ~~waiver~~ *exemption*.

29.4(3) *The dentist shall ensure that each facility where sedation services are provided is staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.*

29.4(4) A dentist administering conscious sedation must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course~~, and the auxiliary personnel shall maintain certification in basic life support and be capable of administering basic life support~~.

29.4(5) A dentist who is performing a procedure for which conscious sedation is being employed shall not administer the pharmacologic agents and monitor the patient without the presence and assistance of at least one qualified auxiliary personnel in the room who is qualified under subrule ~~29.4~~(4) *29.4(3)*.

29.4(6) A licensed dentist who has been utilizing conscious sedation on an outpatient basis in a competent manner for five years preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in subrules *29.4(2)*, 29.4(3), 29.4(4) and 29.4(5).

ITEM 3. Adopt **new** subrule 29.4(9) as follows:

29.4(9) Beginning March 1, 2007, a dentist utilizing conscious sedation on pediatric or medically compromised patients must have completed an accredited residency pro-

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gram that includes formal training in anesthesia and clinical experience in managing pediatric and medically compromised patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing conscious sedation on pediatric or medically compromised patients.

ITEM 4. Amend rule 650—29.5(153), catchwords, as follows:

650—29.5(153) ~~Application for permit.~~ *Permit holders.*

ITEM 5. Amend subrules 29.5(4), 29.5(6), and 29.5(7) as follows:

29.5(4) ~~A provisional permit may be granted the new applicant based solely on credentials until all processing and investigation have been completed. A provisional permit may be issued only if the~~ *If an* applicant will be practicing at a facility that has been previously inspected and approved by the board, *a provisional permit may be granted to the applicant upon the recommendation of the anesthesia credentials committee after review of the applicant's credentials*.

29.5(6) ~~Based~~ *Upon the recommendation of the anesthesia credentials committee that is based* on the evaluation of credentials, facilities, equipment, personnel and procedures of a dentist, the board may determine that restrictions may be placed on a permit.

29.5(7) The actual costs associated with the on-site evaluation of the facility shall be the primary responsibility of the licensee. The cost to the licensee shall not exceed ~~$150~~ *$500* per facility.

ITEM 6. Adopt **new** subrule 29.5(8) as follows:

29.5(8) Permit holders shall follow the American Dental Association's guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

ITEM 7. Amend subrule **29.10(2)**, paragraph **"c,"** as follows:

c. Perform professional evaluations ~~under subrules 29.3(2) and 29.4(2)~~ and report the results of those evaluations to the board.

ARC 5387B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 455B, division IV, part 1, and section 455D.6(6), the Environmental Protection Commission hereby gives Notice of Intended Action to rescind Chapter 118, "Discarded Appliance Demanufacturing," Iowa Administrative Code, and adopt new Chapter 118 with the same title.

This proposed new chapter will improve the Department's ability to ensure that hazardous materials from appliances are being handled in an environmentally sound manner by revising the record-keeping and annual reporting requirements, easing storage time limits on PCB-containing articles that are disposed of through a regional collection center, and incorporating federal requirements. The chapter has also been reformatted to make it consistent with other chapters and to improve readability.

The annual reports are intended to verify that the demanufacturer is removing refrigerant, PCB-containing articles and mercury switches. Currently, the annual reports only include the amounts of mercury, refrigerant and PCB-containing articles shipped for disposal and the total weight of demanufactured appliances shipped to a recycler. Because current reports do not include the amount of hazardous materials removed from appliances and stored on site awaiting disposal or the number or type of appliances demanufactured, it is very difficult for the Department to determine if a reasonable amount of refrigerant, PCB-containing articles and mercury switches is being removed from the appliances. The new record-keeping and reporting requirements will include the actual number of each type of appliance demanufactured and the number of PCB-containing articles and mercury devices and the amount of refrigerant removed each year. This will enable the Department to make a correlation between the number and type of appliances being demanufactured and the amount of materials recovered.

Currently, PCB-containing articles must be disposed of by incineration, recycling, or another approved method within one year of their removal from the appliance. Because most appliance demanufacturers recover very small quantities of PCB-containing articles, it is often costly to dispose of them within this time frame. The proposed change will allow regional collection centers that accept PCB-containing articles from appliance demanufacturers to dispose of the PCB-containing articles within one year of receiving them rather than within one year of the demanufacturer's removing them from the appliance.

There are also a number of changes which reflect changes in federal regulations or better incorporate federal regulations.

Any interested person may make written suggestions or comments pertaining to the proposed chapter on or before October 17, 2006. Such written materials should be directed to Theresa Stiner, Energy and Waste Management Bureau, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895 or Theresa.Stiner@dnr.state.ia.us. Persons wishing to convey their views orally should contact Theresa Stiner at (515)281-8646.

The Energy and Waste Management Bureau encourages stakeholders submitting comments to utilize the following guidelines. These guidelines aid the Bureau in accurately understanding and creating a record of public input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business or organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

A public hearing will be held on October 17, 2006, at 9 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.6(6).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 567—Chapter 118 and adopt the following **new** chapter in lieu thereof:

CHAPTER 118
DISCARDED APPLIANCE DEMANUFACTURING

567—118.1(455B,455D) Purpose. The purpose of this chapter is to implement Iowa Code chapter 455B, division IV, part 1, and section 455D.6(6) to ensure the proper removal and disposal of electrical parts containing polychlorinated biphenyls (PCBs), components containing mercury, and refrigerants (e.g., CFCs and HCFCs) from discarded appliances.

567—118.2(455B,455D) Applicability and compliance.

118.2(1) All discarded appliances must be demanufactured before being disposed of or recycled. This chapter does not apply to the service, repair, reuse or rebuilding of appliances or components for their original purpose. These rules do not apply to the removal of capacitors, refrigerants or components containing mercury during the maintenance or service of equipment containing such items.

118.2(2) A person must obtain an Appliance Demanufacturing Permit (ADP) from the department of natural resources (DNR) before conducting any demanufacturing activities.

118.2(3) Any person engaged in demanufacturing must be in compliance with all federal and state laws relating to the management and disposition of all hazardous wastes, hazardous materials, universal wastes, PCBs and refrigerants.

567—118.3(455B,455D) Definitions.

"Appliances" means household and commercial devices such as refrigerators, freezers, kitchen ranges, air-conditioning units, dehumidifiers, gas water heaters, furnaces, clothes washers, clothes dryers, dishwashers, microwave ovens and commercial coolers with components containing mercury, refrigerants, or PCB-containing capacitors.

"Ballast" means an electrical device containing capacitors for the purpose of triggering high-level electrical components. A ballast provides electrical balance within the high-level electrical component circuitry.

"Capacitor" means a device for accumulating and holding a charge of electricity that consists of conducting surfaces separated by a dielectric fluid.

"CFC" means chlorofluorocarbons, including any of several compounds used as refrigerants.

"CFR" means Code of Federal Regulations.

"Demanufacturing" means the removal of components, including but not limited to PCB-containing capacitors, ballasts, mercury-containing components, fluorescent tubes, and refrigerants, from discarded appliances.

"Discarded" means no longer to be used for the original intended purpose.

"DOT-approved container" means those containers approved by the U.S. Department of Transportation, the agency responsible for shipping regulations for hazardous materials in the United States.

"Facility" means any landfill, transfer station, material recovery facility, salvage business, appliance service or repair shop, appliance demanufacturer, shredder operation or other party which may accept appliances for demanufacturing. A demanufacturing facility may occupy a portion of a material recovery facility, salvage business, landfill, transfer station or other site.

"Fixed facility" means a permitted appliance demanufacturer operating at a permanent location.

"Fluff" means the residual waste from the shredding operation after metals recovery.

"Hazardous condition" means any situation involving an actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment.

"HCFC" means hydrochlorofluorocarbons, including any of several compounds used as refrigerants.

"Mercury-containing components" means devices containing mercury. Examples include, but are not limited to, thermostats, thermocouples, mercury switches and fluorescent tubes.

"Mobile operation" means a permitted appliance demanufacturer that has equipment capable of operating in an area away from a fixed, permitted location.

"PCB" or "PCBs" means polychlorinated biphenyl, which is a chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees, or any combination of substances that contain polychlorinated biphenyl.

"Point of demanufacturing" means the actual location of demanufacturing for fixed facilities and mobile operations.

"Reclaim" means to reprocess refrigerant to an EPA ARI-700-88 standard.

"Recovery" means to remove all refrigerants to EPA standards.

"Small capacitor" means a capacitor which contains less than 1.36 kg (3 lbs) of dielectric fluid. The following assumptions may be used if the actual weight of the dielectric fluid is unknown. A capacitor whose total volume is less than 1,639 cubic centimeters (100 cubic inches) may be considered to contain less than 1.36 kg (3 lbs) of dielectric fluid, and a capacitor whose volume is more than 3,278 cubic centimeters (200 cubic inches) must be considered to contain more than 1.36 kg (3 lbs) of dielectric fluid. A capacitor whose volume is between 1,639 and 3,278 cubic centimeters may be considered to contain less than 1.36 kg (3 lbs) of dielectric fluid if the total weight of the capacitor is less than 4.08 kg (9 lbs).

567—118.4(455B,455D) Storage and handling of appliances prior to demanufacturing.

118.4(1) Any person collecting and storing discarded appliances must store the appliances so as to prevent electrical capacitors, refrigerant lines and compressors, and components containing mercury from being damaged and allowing a release into the environment.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

118.4(2) No method of handling discarded appliances may be used which in any way damages, cuts or breaks refrigerant lines or crushes compressors, capacitors, or mercury-containing components, or may cause a release of refrigerant, PCBs or mercury into the environment.

118.4(3) No more than 1,000 discarded appliances may be stored at a location prior to demanufacturing.

118.4(4) Discarded appliances may not be stored for more than 270 days before being demanufactured.

567—118.5(455B,455D) Appliance demanufacturing permits.

118.5(1) Permit required. A person must obtain an Appliance Demanufacturing Permit (ADP) from the department before conducting any demanufacturing activities.

118.5(2) Types of permits.

a. A person may request a permit that excludes appliances that contain a particular type of material (e.g., refrigerants, sodium chromate, PCBs, or mercury switches). Persons may not demanufacture or place their unique mark on an appliance that once contained a material that is excluded from their permit. An appliance demanufacturing facility must clearly post the types of appliances the facility does not accept.

b. Permits may be issued for both fixed facilities and mobile operations.

118.5(3) Transfer of title and permit. If title to an appliance demanufacturing facility is transferred to another party, the department shall transfer the permit within 60 days if the department determines that the following requirements have been met:

a. The title transferee has applied in writing to the department within 30 days of the transfer of title to request a transfer of the permit.

b. The permitted facility and title transferee are in compliance with Iowa Code chapters 455B and 455D, this chapter, and the conditions of the permit.

118.5(4) Permit conditions. A permit may be issued with conditions, specified in writing by the department, that are necessary to ensure the appliance demanufacturing facility can be operated in a safe and effective manner and in compliance with Iowa Code chapters 455B and 455D and this chapter.

118.5(5) Inspection of site and operation. The department shall inspect facilities prior to issuing an appliance demanufacturing permit. The permit will not be issued until the facility is in compliance with these rules. Appliance demanufacturing facilities may be inspected by the department throughout the permit period and prior to permit renewal.

118.5(6) Duration of permits. Appliance demanufacturing permits shall be issued and may be renewed for a five-year term.

118.5(7) Request for permit renewal. Applications for permit renewal must address any changes to the information previously submitted pursuant to subrule 118.5(1). If there has been no change in an item, the applicant shall so indicate on the application form. The renewal application, Form 542-8005, must be submitted to the solid waste section of the DNR central office in Des Moines a minimum of 60 days before permit expiration.

118.5(8) Request for permit modification. An application for permit amendment must be submitted and the amendment must be issued by the department before significant changes may be made by the permit holder to the process or facility. The applicant shall provide a revised plan of operations, a contingency plan, and any other documentation required in 118.6(1) that will change.

118.5(9) Factors in permit issuance decisions. The department may request that additional information be submitted for review to make a permit issuance decision. The department may review and inspect the facility, its agents and operators, and compliance history. The department may review whether a good-faith effort to maintain compliance and protect human health and the environment is being made and whether a compliance schedule is being followed. The department may issue a permit on a trial basis.

567—118.6(455B,455D) Appliance demanufacturing permit application requirements. The permit application for appliance demanufacturing must contain the following information to be submitted on Form 542-8005.

1. Facility name.
2. Office address.
3. Location of demanufacturing facility if different from office address.
4. Contact person or official responsible for the operation of the facility.
5. Type, source and expected number or weight of appliances to be handled per year.
6. Schematic site plans of a fixed facility, including the schematic floor plans of any buildings showing where activities will take place and where waste is stored.
7. For mobile operations: schematic plans, or a description and photographs, of the mobile van or trailer.
8. A copy of the EPA Refrigerant Recovery or Recycling Device Acquisition Certification Form 2060-0256.
9. Operation plan: a detailed summary of the activities that will be performed on each type of appliance considered for demanufacturing. This summary must include step-by-step activities of the demanufacturing process.
10. A contingency plan detailing specific procedures to be used in case of equipment breakdown or fire, including methods to be used to remove or dispose of accumulated waste.
11. A copy of the Authorization to Discharge **(**Stormwater) Permit number, where applicable.
12. A copy of EPA Notification of PCB Activity Form 7710-53 and a return response from EPA. Facilities storing PCB-containing articles longer than 30 days must register with EPA. This form may be obtained by contacting the Fibers and Organics Branch, Office of Pollution Prevention and Toxics, United States Environmental Protection Agency, Ariel Rios Building (7404), 1200 Pennsylvania Avenue NW, Washington, DC 20460.
13. Documentation showing compliance with rule 118.8(455B,455D).
14. A copy of the unique marking system to be applied to each discarded appliance after demanufacturing.
15. Documentation that a permanent facility meets local zoning requirements.

567—118.7(455B,455D) Fixed facility and mobile operations. The following removal and disposal requirements must be met by both fixed facilities and mobile operations.

118.7(1) Demanufacturing of appliances must take place on an impervious floor (including but not limited to concrete, ceramic tile, or metal, but not wood). Any spills must be contained and picked up with proper equipment and procedures and be disposed of properly.

118.7(2) The point of demanufacturing must be located at least 50 feet from a well and any water of the state.

118.7(3) The facility must be located above the 100-year floodwater elevation.

118.7(4) A permanent facility must meet local zoning requirements.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

118.7(5) An applicant must establish a unique marking system, to be submitted with the permit application for department approval, signifying that all refrigerants, PCB-containing articles, and mercury-containing components have been removed. The unique marking system must be a minimum of nine inches by nine inches and must be applied to the appliances after demanufacturing.

567—118.8(455B,455D) Training. Beginning January 1, 2003, at least one owner or employee of an appliance demanufacturing facility must have a training certificate from a department-approved training course. A person who has completed the department-approved training must be on site at all times when discarded appliances are being demanufactured. The training will, at a minimum, cover the following topics.

1. State and federal regulations for the removal, storage, transportation, and disposal of refrigerant, PCB-containing articles, mercury-containing components, and asbestos from appliances.
2. Record-keeping requirements.
3. Safety precautions for handling appliances and hazardous materials.
4. Spill prevention and cleanup procedures appropriate for appliance demanufacturing.
5. The proper methods of loading and unloading discarded appliances.
6. General demanufacturing procedures.

567—118.9(455B,455D) Refrigerant removal requirements.

118.9(1) All owners of refrigerant recovery and recycling equipment must provide certification to EPA that they have acquired and are using EPA-approved equipment.

118.9(2) Refrigerant in appliances must be recovered to EPA standards using equipment meeting EPA requirements (40 CFR Part 82.162). Refrigerant may be removed prior to delivery to the appliance demanufacturer if it is removed by an appliance service or repair facility employee certified for the removal of refrigerant.

118.9(3) The removal of refrigerant from refrigeration appliances must take place in an area where the temperature of the surrounding air and of the appliance being demanufactured is 45 degrees Fahrenheit or greater.

118.9(4) Facilities that are not EPA-certified refrigerant reclaimers must ship recovered refrigerant to an EPA-certified reclamation facility or properly dispose of the refrigerant at an EPA-permitted facility. Reclamation may take place on site only if the appliance demanufacturing facility is certified as a reclaimer by the EPA. Any refrigerant that cannot be reclaimed or recycled must be properly disposed of by incineration or other acceptable means.

118.9(5) Compressor oil.

a. Compressor oil from refrigeration unit compressors may be removed during the demanufacturing process, and any oil removed must be stored in accordance with 567—119.5(455D,455B).

b. Compressor oil is not hazardous and may be burned in used oil-fired space heaters, provided the heaters have a capacity of 0.5 BTUs (British thermal units) per hour or more.

c. Compressor oil may be sold to a marketer of used oil.

118.9(6) Ammonia gas-operated refrigerators and air conditioners.

a. Ammonia gas must be vented into water.

b. Sodium chromate must be removed from refrigeration equipment containing sodium chromate.

c. Sodium chromate liquid is a hazardous waste and must be disposed of at an EPA-permitted facility.

d. Removal of sodium chromate liquid must take place on an impervious surface. In case of a spill, the spilled liquid and the material used as absorbent must be handled as a hazardous waste and disposed of as a hazardous waste.

e. Sodium chromate must be stored in a DOT-approved container that shows no sign of damage. The container must be labeled with a proper EPA-approved chromium label stating "chromium" or "hazardous waste" as required by 40 CFR Part 262.32 and 49 CFR Part 172.304 in both English and the predominant language of any non-English-reading workers.

f. Prior to shipment, sodium chromate must be packaged to prevent leakage, and all containers must be sealed.

g. Persons generating sodium chromate waste must maintain records to determine if they are a conditionally exempt small-quantity generator, small-quantity generator, or large-quantity generator of hazardous waste.

h. Asbestos insulation found on refrigerant lines must be removed. Asbestos must be handled in a manner that complies with Occupational Safety and Health Administration (OSHA) regulations.

i. Asbestos must be moistened and double bagged, in accordance with 567—Chapter 109, prior to disposal at a landfill approved for asbestos disposal for the person's solid waste comprehensive planning area. A person who needs to dispose of asbestos must contact the landfill and make arrangements for the disposal and any additional packaging and handling procedures.

567—118.10(455B,455D) Mercury-containing component removal and disposal requirements.

118.10(1) All components containing mercury shall be removed from appliances. Precautions shall be taken to prevent breakage of the mercury-containing components and the release of mercury.

118.10(2) All mercury-containing component storage containers must be labeled with the proper EPA-approved mercury label stating "Universal Waste—Mercury Containing Equipment," "Waste Mercury-Containing Equipment" or "Used Mercury-Containing Equipment" in both English and the predominant language of any non-English-reading workers.

118.10(3) The date when the first mercury-containing component was placed in the container shall be affixed to the container.

118.10(4) Mercury-containing components may be stored for no longer than one year.

118.10(5) Accumulation of mercury-containing components shall not exceed 5,000 kg (1,100 pounds) at any time.

118.10(6) All mercury containers must be sealed prior to shipment.

118.10(7) All components containing mercury must be disposed of at an EPA-approved mercury recycling/recovery facility.

118.10(8) Fluorescent tubes, lamps, bulbs, and similar items must be placed in a container and packaged to prevent breakage for shipment to an EPA-approved recycler or must be processed in a manner that complies with state and federal regulations.

118.10(9) All mercury-containing components must be managed in accordance with 40 CFR 273 and all state and federal regulations.

567—118.11(455B,455D) Capacitor removal requirements.

118.11(1) All capacitors must be removed from discarded appliances unless the appliance manufacturer certifies in writing that no PCBs were used in the manufacture of the appliance.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

118.11(2) Capacitors that meet one or more of the following criteria may be disposed of or recycled as solid waste.

a. Is proven to be free of PCBs by an approved laboratory.

b. Is imprinted by the manufacturer with the words "No PCBs" on the body of the capacitor.

c. Is certified in writing by the manufacturer of the capacitor not to contain PCBs.

d. Does not contain dielectric fluid.

118.11(3) All capacitors not meeting the criteria in subrule 118.11(2) must be disposed of in accordance with subrule 118.11(5).

118.11(4) Containers for storage and disposal of PCB-containing items. PCB-containing items must be stored and transported according to the Toxic Substances Control Act (TSCA) (40 CFR Part 761) and disposed of at a TSCA-permitted disposal facility. Facilities used for the storage of PCB-containing items designated for disposal must meet the following storage requirements:

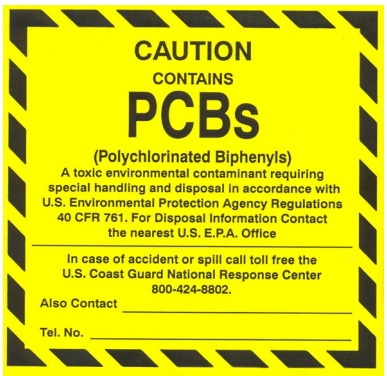
a. Facilities shall register with the US EPA and receive an EPA identification number.

b. PCB-containing items must be stored in a manner that provides adequate protection from the elements and adequate secondary containment. This storage must take place on an impervious material above the 100-year floodwater elevation.

c. The point of demanufacturing must be located above the 100-year floodwater elevation.

d. All capacitors containing or suspected of containing PCBs must be placed in a DOT-approved container that shows no signs of damage. The bottom of the container must be filled to a depth of two inches with absorbent material such as sand, oil-dry, or kitty litter.

e. All DOT-approved containers must be affixed with the large PCB mark (M_L) as described in 40 CFR Part 761.45 and shown below.



f. The date when the first PCB-containing item was placed in the container shall be placed on the container.

g. Nonleaking small PCB capacitors may be stored for up to 30 days from the date of removal in an area that does not comply with the requirements in 118.11(4)"a" to "f" provided a notation is placed on the PCB capacitor indicating the date the item was removed from the appliance.

h. PCB-containing items may be stored for no more than 270 days. The storage area must be labeled with the PCB M_L mark. The storage area must be inspected every 30 days, and the inspection must be documented.

i. If a demanufacturer stores more than 45 kg (99.4 lbs) at any one time, the demanufacturer must maintain annual written records and the annual document log as required by 40 CFR 761.180.

118.11(5) Transportation and disposal.

a. Appliance demanufacturers may dispose of PCB capacitors by one of two means. If the facility is a conditionally exempt small quantity generator (CESQG), the demanufacturer may send the properly marked and dated container of capacitors to a regional collection center (RCC) permitted under 567—Chapter 123 for disposal. If the facility is not a CESQG, the capacitors must be manifested and shipped for disposal in accordance with 40 CFR 761.65.

b. Disposal through an RCC. Shipments from a CESQG to an RCC shall be considered equivalent to disposal as municipal solid waste for the purposes of 40 CFR 761.60(b)(2)(iii); capacitors may not be disposed of in a landfill. An RCC may accept PCB capacitors without having to provide a certificate of disposal. The RCC shall provide the appliance demanufacturer with a receipt specifying the name of the RCC, the appliance demanufacturer from which the capacitors were received, the weight or number of capacitors, and the date the capacitors were received. Copies of this document must be retained for three years at both locations. The date that capacitors are received shall be considered the date the capacitors are determined to be PCB-containing waste for the purposes of 40 CFR 761.65(a)(1). Capacitors may be consolidated in DOT-approved shipping containers for transport for disposal.

c. Disposal through EPA-approved facility for the disposal of PCB waste. The labeled and dated DOT-approved container must be transported by a transporter with a valid EPA ID number, using an EPA uniform Hazardous Waste Manifest Form. All containers must be sealed prior to shipment. The demanufacturer has one year from the date the first PCB-containing item is placed in the container to properly dispose of the contents by incineration, recycling, or another approved method pursuant to 40 CFR Part 761.60(b) or (c). Disposal must be documented and the record kept by the demanufacturer for three years from the date the PCB-containing waste was accepted by the initial transporter.

d. PCB capacitors shall be properly disposed of within one year of removal from the appliance. The generator shall obtain a certificate of disposal within 30 days after the disposal date. If a certificate of disposal is not obtained within 30 days, the EPA regional administrator must be notified pursuant to 40 CFR Part 761.218(d).

567—118.12(455B,455D) Spills.

118.12(1) Any spills from leaking or cracked capacitors must be handled by placing the capacitor and any contaminated rags, clothing, and soil into a container for shipment to an EPA-approved waste disposal facility. Spills of liquid PCBs which occur outside a DOT-approved container must be cleaned and the cleanup verified by sampling as described at 40 CFR Part 761.130. Detailed records of such cleanups and sampling must be maintained as described at 40 CFR Part 761.180.

118.12(2) Mercury spill kits (with a mercury absorbent in the kits) must be on hand and used in the event of a mercury spill. Any waste from the cleanup of a mercury spill must be disposed of as a hazardous waste.

118.12(3) In the event a spill results in a hazardous condition, the facility must notify the department of natural resources at (515)281-8694 and the local police department or sheriff's office of the affected county of the occurrence of a hazardous condition as soon as possible, but no later than six hours after the onset or discovery of a spill pursuant to 567—Chapter 131.

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567—118.13(455B,455D) Record keeping and reporting.

118.13(1) Annual reports with the information required in subrule 118.13(2) are:

a. To be sent to the solid waste section of the DNR central office in Des Moines;

b. Due January 31 each year for the activities of the previous calendar year;

c. To be submitted on forms provided by the department, which may be submitted electronically when the electronic format is completed; and

d. To be retained by the permit holder for at least three years.

118.13(2) Annual reports shall contain the following information for the previous calendar year.

a. Number of appliances demanufactured in each of the following categories:

(1) Refrigerators and freezers.
(2) Commercial coolers.
(3) Air-conditioning units.
(4) Dehumidifiers.
(5) Gas water heaters.
(6) Furnaces.
(7) Clothes washers and clothes dryers.
(8) Dishwashers.
(9) Microwave ovens.
(10) Other items containing mercury, refrigerant or PCB-containing articles.

b. Number of mercury switches removed from appliances.

c. Number of mercury thermocouples removed from appliances.

d. Date the first item was placed in the mercury storage drum that is in use on December 31.

e. Number of fluorescent tubes removed from appliances.

f. Number of sodium chromate-containing appliances shipped to another demanufacturer.

g. Amount of refrigerant removed by type.

h. Number of PCB capacitors removed.

i. Number of PCB ballasts removed.

j. Date the first PCB-containing item was placed in the storage drum that is in use on December 31.

118.13(3) A permitted appliance demanufacturing facility shall retain the following records on site for a minimum of three years.

a. All hazardous waste manifests and bills of lading for shipments of refrigerant, mercury switches, PCB-containing materials and any hazardous waste.

b. Receipts for any sodium chromate-containing units that were sent to another facility for processing.

c. Documentation of destruction or receipt from a regional collection center for all PCB materials shipped.

d. Documentation of inspections of the PCB storage area as required by paragraph 118.11(4)"h."

e. Annual written records and annual document log if required by paragraph 118.11(4)"i."

f. Copy of the annual report as required in subrule 118.13(1).

567—118.14(455B,455D) Appliance demanufacturing facility closure requirements. An appliance demanufacturing facility shall submit to the department central office and department field office with jurisdiction over the appliance demanufacturing facility written notice of intent to permanently close the facility at least 90 days before closure. Closure shall not be official until the department field office has provided written certification of the completion of the following activities:

1. Removal of all appliances that have not been demanufactured.

2. Proper disposal of all refrigerant, PCBs, mercury and all hazardous materials.

3. Submission of an annual report covering January through the last disposal of hazardous materials, PCBs and refrigerant.

567—118.15(455B,455D) Shredding of appliances.

118.15(1) Facilities shredding demanufactured appliances shall sample the fluff from the shredding of demanufactured appliances at least quarterly, and analyze the fluff according to Test Methods for Evaluation of Solid Waste, Physical-Chemical Methods SW 846, US EPA, Third Edition 1986, for the presence of PCBs, and according to the toxicity characteristic leaching procedure (TCLP) for heavy metals. The waste shall be sampled once a day for seven consecutive working days to make a composite sample. If the concentrations of heavy metals do not exceed concentrations listed in 40 CFR 261.24, the fluff may be landfilled in Iowa. Results must be retained on site for a minimum of three years and be submitted to the department within 30 days of the end of each quarter.

118.15(2) Fluff from the shredding of demanufactured appliances may be sampled and tested by the department at any time.

118.15(3) A person or facility engaged in demanufacturing in the state may not shred, crush, or bale any appliances that have not been demanufactured. A person or facility located in Iowa that does not engage in demanufacturing but accepts appliances from demanufacturers for recycling or disposal may shred, crush, or bale only appliances that have been demanufactured in accordance with federal regulations and the laws of the state from which the appliances are received.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.6(6).

ARC 5386B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2006 Iowa Acts, House File 2362, section 7, the Environmental Protection Commission hereby gives Notice of Intended Action to adopt new Chapter 215, "Mercury-Added Switch Recovery from End-of-Life Vehicles," Iowa Administrative Code.

This rule making is in response to 2006 Iowa Acts, House File 2362. The proposed rules are taken directly from the legislation that was passed with only minor formatting changes.

Any interested person may make written suggestions or comments pertaining to the proposed rules on or before October 17, 2006. Such written materials should be directed to Theresa Stiner, Energy and Waste Management Bureau,

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895 or Theresa.Stiner@dnr.state.ia.us. Persons wishing to convey their views orally should contact Theresa Stiner at (515)281-8646.

The Energy and Waste Management Bureau encourages stakeholders submitting comments to utilize the following guidelines. These guidelines aid the Bureau in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business or organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

A public hearing will be held on October 17, 2006, at 8:30 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These rules are intended to implement 2006 Iowa Acts, House File 2362.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt the following **new** 567—Chapter 215:

CHAPTER 215
MERCURY-ADDED SWITCH RECOVERY
FROM END-OF-LIFE VEHICLES

567—215.1(455B) Purpose. The purpose of this chapter is to implement 2006 Iowa Acts, House File 2362, to reduce the quantity of mercury in the environment by removing mercury-added switches from end-of-life vehicles in Iowa and by creating a collection, recovery, and incentive program for mercury-added switches removed from vehicles in Iowa.

567—215.2(455B) Compliance. Except as expressly provided in this chapter, compliance with this chapter shall not exempt a person from compliance with any other law.

567—215.3(455B) Definitions. As used in this chapter:

"Capture rate" means the amount of mercury removed, collected, and recovered from end-of-life vehicles, expressed as a percentage of the mercury available from mercury-added switches in end-of-life vehicles annually.

"End-of-life vehicle" means any vehicle which is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of recycling and that does not exceed 10,000 pounds gross vehicle weight.

"Manufacturer" means any person that is the last person to produce or assemble a new vehicle that utilizes mercury-added switches, or in the case of an imported vehicle, the importer or domestic distributor of such vehicle. "Manufacturer" does not include a person that has never utilized a mercury-added switch in the production or assembly of a new vehicle.

"Mercury-added switch" means a light switch that contains mercury which was installed in a motor vehicle by a manufacturer.

"Scrap recycling facility" means a fixed location where machinery and equipment are utilized for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes.

"Vehicle recycler" means any person engaged in the business of acquiring, dismantling, or destroying six or more vehicles in a calendar year for the primary purpose of resale of the vehicles' parts.

567—215.4(455B) Plans for removal, collection, and recovery of vehicle mercury-added switches.

215.4(1) By September 30, 2006, each manufacturer of vehicles sold in this state shall, individually or as part of a group, develop and publish a plan for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles that were manufactured by the manufacturer. Publication shall be in accordance with 2006 Iowa Acts, House File 2362, section 8(2), and subrule 215.6(2).

215.4(2) The manufacturer shall implement a system to remove, collect, and recover mercury-added switches from end-of-life vehicles within 90 days of publication of the plan. The system developed and implemented pursuant to this rule shall provide, at a minimum, all of the following:

a. Educational materials to inform the public and other stakeholders about the purpose of the collection program and how to participate in the program.

b. A method for implementing, operating, maintaining, and monitoring the system, in accordance with subrule 215.4(6). This may include the use of third-party contractors that are qualified and fully insured to perform these tasks.

c. Information about mercury-added switches identifying all of the following:

(1) The make, model, and year of vehicles potentially containing mercury-added switches.

(2) A description of the mercury-added switches.

(3) The location of the mercury-added switches.

(4) Safe, cost-effective, and environmentally sound methods for the removal of mercury-added switches from end-of-life vehicles.

d. A method to arrange and pay for the transportation of the collected mercury-added switches to permitted facilities.

e. A method to arrange and pay for the recycling of the mercury-added switches.

f. A method to track participation and publish the progress of the mercury-added switch collection in accordance with subrule 215.6(2).

g. A database of participating vehicle recyclers, including all of the following:

(1) Documentation that the vehicle recycler joined the program.

(2) Records of all submissions by a vehicle recycler of any information required pursuant to 215.4(2)"f."

(3) Confirmation that the vehicle recycler has submitted mercury-added switches at least every 12 months since joining the program.

h. A target mercury-added switch capture rate for vehicles manufactured by the manufacturer of 90 percent. A description of additional or alternative actions that shall be

implemented by the manufacturer to improve the system and its operation in the event that the target capture rate is not met shall be published with the required tracking information no less than annually.

i. The system shall not include inaccessible mercury-added switches from end-of-life vehicles with significant damage to the vehicle in the area surrounding the mercury-added switch location. All accessible mercury-added switches are expected to be collected under the provisions of this division.

215.4(3) In developing a removal, collection, and recovery system for end-of-life vehicles, a manufacturer shall, to the extent practicable, utilize the existing end-of-life vehicle recycling infrastructure.

215.4(4) If the commission determines that the manufacturer's plan for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles does not comply with this chapter, the commission may require the manufacturer to make any necessary modification to the plan.

215.4(5) On July 1, 2020, the commission shall cease enforcement of the removal, collection, and recovery plans under this chapter. On or before July 1, 2020, the commission shall review the mercury-added switch removal, collection, and recovery provisions and submit a recommendation to the general assembly regarding the necessity of continuing the enforcement of the removal, collection, and recovery plans.

215.4(6) The total cost of the removal, collection, and recovery system for mercury-added switches shall be paid by the manufacturer. Costs shall include but not be limited to all of the following:

a. Labor to remove mercury-added switches. Labor shall be reimbursed at a minimum rate of $4 per mercury-added switch removed or, if the vehicle identification number of the source vehicle is required for reimbursement, at a minimum rate of $5.

b. Training.

c. Packaging in which to transport mercury-added switches to recycling, storage, or disposal facilities.

d. Shipping of mercury-added switches to recycling, storage, or disposal facilities.

e. Recycling, storage, or disposal of mercury-added switches.

f. Public education materials and presentations.

g. Maintenance of all appropriate systems and procedures to protect the environment from mercury contamination from collected mercury-added switches.

215.4(7) A vehicle recycler that performs as required under a removal, collection, and recovery plan shall be afforded the protections provided in Iowa Code section 613.18.

567—215.5(455B) Proper management of mercury-added vehicle switches.

215.5(1) Prior to delivery to a scrap recycling facility, a person who sells, gives, or otherwise conveys ownership of an end-of-life vehicle to the scrap recycling facility for recycling shall remove all mercury-added switches from such end-of-life vehicle unless the mercury-added switch is inaccessible due to significant damage to the end-of-life vehicle in the area where the mercury-added switch is located.

215.5(2) A person shall not represent that mercury-added switches have been removed from a vehicle or vehicle hulk being sold, given, or otherwise conveyed for recycling if that person has not removed such mercury-added switches or arranged with another person to remove such switches.

567—215.6(455B) Public notification.

215.6(1) The department shall make available to the general public in an electronic format the plan of a manufacturer for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles and any report required under 567—215.7(455B).

215.6(2) Publication of all required plans, information, reports, and educational materials under this chapter shall be through no less than two types of media available to the general public. One medium must be available 24 hours per day, seven days per week, and must be maintained with current information. Acceptable types of media include but are not limited to Internet Web sites, periodicals, journals, and other publicly available media in the state.

567—215.7(455B) Reporting. One year after the implementation of a removal, collection, and recovery system, and annually thereafter, a manufacturer subject to rule 567—215.4(455B) shall report to the department concerning the manufacturer's performance under the manufacturer's plan. The report shall include statistical information received under rule 567—215.4(455B). The report shall also include but not be limited to all of the following:

1. The number of mercury-added switches collected.
2. An estimate of the amount of mercury contained in the collected switches.
3. The capture rate as defined in rule 567—215.3(455B).
4. The estimated number of vehicles manufactured by the manufacturer that contain mercury-added switches.
5. The estimated number of vehicles manufactured by the manufacturer that have been processed for recycling by vehicle recyclers.

567—215.8(455B) State procurement. Notwithstanding other policies and guidelines for the procurement of vehicles, the state shall, by July 1, 2007, revise its policies, rules, and procedures to give priority and preference to the purchase of vehicles free of mercury-added components, taking into consideration competition, price, availability, and performance.

567—215.9(455B) Future repeal of mercury-free recycling Act—implementation of national program.

215.9(1) If a national mercury-added switch recovery program is developed and implemented with the cooperation and approval of the United States Environmental Protection Agency, the provisions of these rules shall be superseded by the provisions of the national program, and this chapter shall be rescinded, provided the following conditions are met:

a. The national program includes a target mercury-added switch capture rate for this state that meets or exceeds the target capture rate established in paragraph 215.4(2)"h."

b. The national program includes a funding mechanism that provides for the total costs of the national mercury-added switch recovery program implemented in this state to be paid for by program participants or with federal moneys.

215.9(2) The director of the department of natural resources shall notify the Iowa Code editor of the date when the national mercury-added switch recovery program is implemented.

These rules are intended to implement 2006 Iowa Acts, House File 2362.

ARC 5392B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These amendments do the following:

- Give the Department's protective service supervisors sole authority to approve extensions of time for completing dependent adult abuse reports. Under current practice, a protective service worker must contact the Central Abuse Registry to receive approval for an extension, complete a form, have the form signed by the supervisor after the Registry approves the extension, and attach the form to the printed copy of the report.
- Rescind the subrule regarding access to dependent adult abuse information. This subrule repeats policy from the Iowa Code and is, therefore, unnecessary. The new subrule will reference Iowa Code section 235B.6 for detailed access policies.
- Clarify that the Department shall not release the identity of the person who made the report of dependent adult abuse. People who make reports of dependent adult abuse and the dependent adults who are abused will be safer from retaliation from the person who is responsible for the abuse if it is clear that the Department may not divulge the name of the person who made the report of abuse. The identity of the reporter may be released to employees of the Department and attorneys representing the Department.

These amendments do not provide for waivers in specified situations, as these amendments confer a benefit by streamlining the extension process and by clarifying the Department's policy on release of the name of an informant. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 18, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code chapter 235B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 176.6(5), introductory paragraph, as follows:

176.6(5) The department, upon completion of its evaluation, shall transmit a copy of its report, including actions taken or contemplated, to the registry within 20 working days of the receipt of the abuse report, unless the ~~registry~~ *worker's supervisor* grants an extension of time for good cause shown. The ~~registry~~ *worker's supervisor* may grant an extension for a maximum of 30 working days. No more than three extensions shall be granted.

ITEM 2. Rescind subrule 176.10(3) and adopt the following **new** subrule in lieu thereof:

176.10(3) Approval of requests. The department shall grant access to dependent adult abuse information as authorized by Iowa Code section 235B.6. When granting access, the department shall withhold the name of the person who made the report of dependent adult abuse, except in response to requests from:

a. An employee of the department, or
b. An attorney representing the department.

ARC 5409B

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

The rules in Chapter 15 establish certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B. The proposed amendments clarify limitations on the receipt of gifts and loans by insurance producers. The proposed amendments also implement the changes made to Iowa Code section 505.16(2) in 2006 Iowa Acts, Senate File 2364, to require an insurer to report to the Iowa Department of Public Health information relating to a positive human immunodeficiency virus (HIV) test that the insurer receives in connection with an application for insurance when an applicant or policyholder does not designate a physician or alternative testing site to receive the information. The Division intends that Iowa insurance companies and producers will comply with these rules beginning January 1, 2007.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 18, 2006. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on October 18, 2006, at 10 a.m. in the offices of the Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing

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or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 507B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 191—15.8(507B) as follows:

Amend the catchwords as follows:

191—15.8(507B) ~~Sales presentation guidelines~~ *Producer responsibilities.*

Amend subrule **15.8(2)**, paragraph **"b,"** as follows:

b. A producer shall not~~, without good cause~~:

~~(1) Allow a producer or a relative of a producer to be named as owner or beneficiary of a life insurance policy or annuity insuring the life of an unrelated insurance customer. Transactions which involve nominal interim ownership immediately precedent to transfer of ownership into trust are exempt from this subrule;~~

~~(2) Be named as a beneficiary in a will of an unrelated insurance customer;~~

~~(3) Obtain a personal loan or a monetary gift from an unrelated insurance customer;~~

(~~4~~ *1*) Execute a transaction for an insurance customer without authorization by the customer to do so; or

(~~5~~ *2*) Commit any act which shows that the producer has exerted undue influence over a person ~~to take advantage of the producer/customer relationship~~.

ITEM 2. Amend rule 191—15.8(507B) by adopting **new** subrule 15.8(5) as follows:

15.8(5) Prohibited acts.

a. For purposes of this subrule:

"Gift" means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

"Immediate family" shall include parent, mother-in-law, father-in-law, spouse, former spouse, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, child and stepchild. In addition, "immediate family" shall include any other person who is supported, directly or indirectly, to a material extent by a producer.

"Loan" means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for use of the property.

b. A producer shall not:

(1) Solicit or accept, directly or indirectly, at any time, a personal loan from an insurance customer that in the aggregate exceeds $250, unless the customer is:

1. A bank, savings and loan, credit union or other recognized lending entity; or

2. A member of the producer's immediate family.

(2) Solicit or accept, directly or indirectly, at any time, a gift to the producer or to a member of the producer's immediate family from an insurance customer that in the aggregate exceeds $250, unless the customer is a member of the producer's immediate family. A gift to a member of the producer's immediate family shall be included in calculating the aggregate amount. A gift received by a member of the producer's immediate family from a customer that is not a member of the producer's immediate family in excess of the aggregate amount shall be deemed a violation of this subrule by the producer.

(3) Solicit or accept being named as a beneficiary, executor or trustee in a will, trust, insurance policy or annuity of a customer, unless the customer is a member of the producer's immediate family.

(4) Evade or otherwise violate the spirit of this subrule by terminating a producer relationship with an insurance customer for the purpose of soliciting or accepting a loan or a gift, or for the purpose of being named as a beneficiary, executor or trustee in a will, trust, insurance policy or annuity that the producer otherwise would have been prohibited from soliciting or accepting by this subrule. A producer will not be in violation of this subrule if the producer has made a bona fide termination of the producer relationship with the insurance customer and has conducted no insurance or other business with the insurance customer for a period of three years.

c. Transactions which involve nominal interim ownership immediately precedent to transfer of ownership into a trust are exempt from this subrule.

ITEM 3. Amend subrule 15.12(2) as follows:

15.12(2) Form. A preapproved form is provided in ~~Appendix III~~ *Appendix II*. An insurer wishing to utilize a form which deviates from the language in the appendix to these rules shall submit the form to the insurance division for approval. Any form containing, but not limited to, the language in the appendix shall be deemed approved.

ITEM 4. Amend rule 191—15.12(507B) by adopting the following **new** subrule 15.12(3):

15.12(3) Test results. A person engaged in the business of insurance who receives results of a positive human immunodeficiency virus (HIV) test in connection with an application for insurance shall report those results to a physician or alternative testing site of the applicant's or policyholder's choice or, if the applicant or policyholder does not choose a physician or alternative testing site to receive the results, to the Iowa department of public health.

ITEM 5. Amend **191—Chapter 15**, Appendix II, HIV Antibody Test Information Form for Insurance Applicant, numbered paragraph **"5,"** as follows:

5. Disclosure of results. A positive test result will be ~~disclosed~~ *reported* to you *in one of the following ways*. You may choose to have information about ~~your HIV~~ *a positive* test ~~results~~ *result* communicated to you through your physician or through the alternative testing site. *If you do not designate a physician or an alternative testing site to receive the information, the information about a positive test result will be reported to the Iowa Department of Public Health, and the Iowa Department of Public Health will contact you.*

ITEM 6. Amend **191—Chapter 15**, Appendix II, Informed Consent, first unnumbered paragraph following numbered paragraph **"3,"** as follows:

Without a court order or written authorization from me, these results will be made known only to the company and its reinsurers (if involved in the underwriting process). The company will provide results of all tests to a physician of my choice. Positive test results to the HIV Antibody Screen will be disclosed only *to my physician or an alternative testing site* as I direct below. *If I do not designate a physician or alternative testing site to receive the results, the company will provide results of a positive HIV test to the Iowa Department of Public Health.* In addition, the company may make a brief report to MIB, Inc., in a manner described in the Pre-notice which I received as a part of the application process. ~~All~~ *The only information* the company will report to MIB, Inc. is that positive results were obtained from a blood or other bodily

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fluid test. The company will not report what tests were performed or that the positive result was for HIV antibodies.

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INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 20, "Property and Casualty Insurance Rate and Form Filing Procedures," and Chapter 21, "Surplus Lines Requirements," Iowa Administrative Code.

The rules in Chapter 20 describe the procedures for filing rates and forms for approval by the Iowa Insurance Division. The rules in Chapter 21 provide duties and procedures for insurance producers and nonadmitted insurers to follow in order to sell excess and surplus lines insurance in Iowa. The proposed amendments to the rules update and clarify the duties and procedures. The Division intends that Iowa insurance companies and producers will comply with these rules beginning January 1, 2007, for policies sold or issued on or after January 1, 2007.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 18, 2006. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on October 18, 2006, at 1 p.m. at the offices of the Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 515 and 515E.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind rule 191—20.7(515E) as follows:

~~**191—20.7(515E) Risk retention and purchasing groups.** All risk retention groups and purchasing groups required to file notice with the commissioner pursuant to Iowa Code sections 515E.4 and 515E.8 shall include a fee of $100 with each filing.~~

ITEM 2. Amend the title of **191—Chapter 21** as follows:

CHAPTER 21
~~SURPLUS LINES~~ REQUIREMENTS *FOR EXCESS AND SURPLUS LINES, RISK RETENTION GROUPS AND PURCHASING GROUPS*

ITEM 3. Amend rule 191—21.1(515) as follows:

191—21.1(515) Definitions. *In addition to the definitions provided in Iowa Code chapters 515 and 515E, the following definitions shall apply to this chapter, unless the context clearly requires otherwise:*

"Division" means the Iowa insurance division.

"Excess and surplus lines insurance" means surplus lines insurance.

"NAIC UCAA" means a National Association of Insurance Commissioners Uniform Certificate of Authority Application form.

"Nonadmitted insurer" means an insurer that is not licensed by or admitted to do business in this state.

"Place" means obtaining insurance for an insured with a specific insurer.

21.1(1) "Producer" ~~when used herein is defined to be that person who ultimately delivers the policy to the policyholder or~~ *means* the person who places the policy with the insurance company. The producer may be either a resident or nonresident of this state and must be licensed in Iowa to sell insurance classified as excess and surplus lines.

"Qualified surplus lines carrier" means a nonadmitted insurer that the division has determined is qualified to provide surplus lines coverage as set forth in Iowa Code section 515.147, but in no event shall "qualified surplus lines carrier" include an insurer described in Iowa Code section 515.148.

~~**21.1(2)** "Surplus lines carrier" when used herein is defined to be certain nonadmitted insurers qualified to provide surplus lines coverage as set out in Iowa Code section 515.147, but in no event shall the term include those insurers described in Iowa Code section 515.148.~~

"Surplus lines insurance" means insurance on a risk or a part of a risk for which there is no market available through the original insurance producer in Iowa; therefore, the risk needs to be placed with a qualified surplus lines carrier, in accordance with the provisions of Iowa Code chapter 515 and this chapter.

ITEM 4. Amend rule 191—21.2(515) as follows:

191—21.2(515) ~~Nonadmitted insurer's~~ *Qualified surplus lines carriers'* duties.

21.2(1) Insurer liable. Where, pursuant to *Iowa Code* section 515.147, coverage is placed with a ~~nonadmitted insurer~~ *qualified surplus lines carrier*, ~~such insurer~~ *the qualified surplus lines carrier* shall be liable for the premium tax required by *Iowa Code* section 515.147.

21.2(2) How premium tax quoted. A ~~nonadmitted insurer~~ *qualified surplus lines carrier* or *a* broker ~~therefor~~ *for a qualified surplus lines carrier* is authorized to quote a premium which includes tax as is required by *Iowa Code* section 515.147, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component when promulgated. Policy fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

INSURANCE DIVISION[191](cont'd)

ITEM 5. Amend rule 191—21.3(515) as follows:

191—21.3(515) Producers' duties.

21.3(1) Producer collection of tax. A ~~licensed~~ producer who ~~procures or~~ places insurance in ~~nonadmitted insurers~~ *qualified surplus lines carriers* shall collect premium tax from the ~~nonadmitted insurer~~ *qualified surplus lines carriers* by withholding ~~2~~ *1* percent of the premiums for such tax.

21.3(2) ~~Affidavits required. A producer who places insurance shall within 30 days subsequent to the date of delivery of a policy issued by a nonadmitted insurer cause to be filed with the commissioner of insurance a sworn statement on Form No. SL163A. In lieu of filing affidavits for each policy issued by a nonadmitted insurer, the producer may file a diskette with the commissioner on a monthly basis for multiple affidavit filings. The producer shall include with the diskette filed with the commissioner a sworn statement on Form No. SL163B. Copies of Form SL163A and Form SL163B are on file in the insurance division office and the division's Web site, http://www.state.ia.us/government/com/ins/ins.htm.~~ *Quarterly reports required. A producer who places insurance with a qualified surplus lines carrier shall file a report with the division. Reports shall be filed on April 10, July 10, October 10 and January 10, summarizing the surplus lines insurance issued during the prior calendar quarter. The reports shall be made using the division's Form SL2007 and shall be filed electronically or as otherwise directed by the division. A producer is not required to file a report for a quarter in which no surplus lines insurance was issued. If a producer does not file a quarterly report by the due date, the producer shall be fined $100 on the day after the report was due and an additional $100 on the first of each month thereafter until the report is filed.*

21.3(3) Annual report. On or before March 1 of each year, every producer who has placed insurance in ~~nonadmitted insurers~~ *qualified surplus lines carriers when the policies have been issued* during the preceding calendar year shall file *electronically* with the ~~commissioner of insurance~~ *division or as otherwise directed by the division* a sworn report of all such business written during the preceding calendar year *and shall submit the amount*. ~~Said report shall be accompanied by a remittance~~ to cover the taxes due on said business ~~and shall be filed on Form No. SL263~~. Failure to file ~~said~~ *an annual* return or pay the taxes imposed by Iowa Code sections 515.147 et seq., will be deemed grounds for the revocation of *a* producer's license by the insurance division, *and failure to file an annual return or pay taxes within the time requirements of this rule will subject the producer to the penalties of 2006 Iowa Acts, Senate File 2364, section 68* [Iowa Code section 515.147A].

ITEM 6. Amend rule 191—21.4(515) as follows:

191—21.4(515) Producers' duty to insured; evidence of coverage. ~~Each~~ *A* producer ~~placing~~ *who places* coverage ~~in nonadmitted insurers~~ *with a qualified surplus lines carrier* as defined herein shall deliver to the insured, within 30 days of the date ~~of delivery of~~ the policy *is issued*, ~~one of the following:~~

~~1. Language which states as follows~~ *a notice that states the following*: "This policy is issued, pursuant to Iowa Code section 515.147, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." ~~Such requirement may be complied with~~ *A producer may comply with this subrule* by typing or stamping a verbatim copy of this language in a clear and conspicuous place on the policy~~;~~.

~~2. A copy of the affidavit filed with the division.~~

ITEM 7. Amend rule 191—21.5(515) as follows:

191—21.5(515) Procedures for qualification ~~as~~ *of* a nonadmitted insurer *as a qualified surplus lines carrier.*

21.5(1) Any *nonadmitted* insurer who wishes to qualify under Iowa Code section 515.147 as a ~~nonadmitted insurer~~ *qualified surplus lines carrier for purposes of writing excess and surplus lines insurance* shall make an application *to the division*.

21.5(2) The application shall contain the following information, *which also is listed on the division's Web site, www.iid.state. ia.us*:

~~1~~ *a*. A certificate of compliance from the state of domicile.

~~2~~ *b*. ~~An executed power of attorney. This document shall be in a form which is found in the appendix to this chapter.~~ *A completed NAIC UCAA, available through the division's Web site, www.iid.state.ia.us, or through the NAIC Web site, www.naic.org/industry.*

~~3~~ *c*. A *completed NAIC UCAA* Biographical Affidavit ~~of directors and principal officers~~ *form*. ~~This document shall be in a form which is found in the appendix to this chapter~~ *This form is available on the division's Web site, www.iid.state.ia.us, or through the NAIC Web site, www.naic.org/industry.*

~~4~~ *d*. A copy of the insurer's annual statement for the last preceding calendar year. Applications received between November 1 and December 31 will not be examined until an annual statement for the current calendar year is available.

~~5~~ *e*. The insurer's most recent calendar year quarterly financial statement.

~~6~~ *f*. A certified copy of the *insurer's* most recent state of domicile examination report.

~~7~~ *g*. A current certified public accountant audit report.

~~8~~ *h*. A marketing plan of operation.

~~9~~ *i*. A designation of a licensed Iowa resident *insurance* producer qualified to write excess and surplus lines insurance.

j. A completed NAIC UCAA Uniform Consent to Service of Process form, available through the division's Web site, www.iid.state.ia.us, or through the NAIC Web site, www.naic.org/industry.

k. A synopsis of current reinsurance treaties in force.

~~10~~ *l*. Remittance of a ~~$50~~ *$100* filing fee *and a $500 examination fee for all new applicants*.

21.5(3) In addition to the above requirements, the insurer shall have minimum capital and surplus of $5 million and have been actively in operation for at least three years without significant changes in ownership or management during the three-year period. These financial and management requirements may be waived by the ~~commissioner~~ *division* upon a finding that the insurer will be offering coverage in a line of insurance for which there is an unavailability of capacity and an extraordinary need for coverage in this state. The ~~commissioner~~ *division* may require other information as deemed necessary.

21.5(4) *A nonadmitted insurer that met the division's requirements for becoming a qualified surplus lines carrier shall pay a $100 renewal fee by March 1 of each year following the year of qualification. The nonadmitted insurer must provide information requested by the division for determination of continued qualification.*

ITEM 8. Amend rule 191—21.6(515) as follows:

191—21.6(~~515,~~ *515E*) Risk retention groups. A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, they shall follow the

INSURANCE DIVISION[191](cont'd)

procedure set forth in subrule 21.3(2). In the event that the group desires to pay the premium tax directly, it shall file with the ~~commissioner~~ *division, electronically or as directed by the division,* a sworn statement on Form No. SL264 ~~. A copy of Form SL264 is on file in the insurance division office.~~ *and other information required through the division's Web site, www.iid.state.ia.us.*

ITEM 9. Adopt **new** rule 191—21.7(515E) as follows:

191—21.7(515E) Procedures for qualification as a risk retention group.

21.7(1) Any insurer who wishes to register under Iowa Code chapter 515E as a risk retention group shall file with the division an application that shall contain:

a. The information set forth in Iowa Code sections 515E.4(1) and (2), which is also listed on the division's Web site at www.iid.state.ia.us; and

b. Remittance of a $100 filing fee plus any additional retaliatory fees.

21.7(2) A risk retention group shall pay a $100 renewal fee by March 1 of each year following the year of registration. The risk retention group must provide information requested by the division for determination of continued registration.

ITEM 10. Adopt **new** rule 191—21.8(515E) as follows:

191—21.8(515E) Procedures for qualification as a purchasing group.

21.8(1) Prior to doing business in this state, a purchasing group shall furnish to the division notice that shall include:

a. The information set forth in Iowa Code section 515E.8, which also is listed on the division's Web site, www.iid.state.ia.us; and

b. Remittance of a $100 filing fee.

21.8(2) A registered purchasing group shall pay a $100 renewal fee by March 1 of each year following the year of registration. The purchasing group must provide information requested by the division for determination of continued registration.

ITEM 11. Adopt **new** rule 191—21.10(515,515E) as follows:

191—21.10(515,515E) Failure to comply; penalties. Failure of a producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code section 515.147, 515.148, or 515.149, or chapter 515E may subject the producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code chapter 507B or 2006 Iowa Acts, Senate File 2364, section 68 [Iowa Code section 515.147A].

ITEM 12. Amend **191—Chapter 21** by deleting the forms entitled "Power of Attorney," "Copy of Resolution," and "Biographical Affidavit" at the end of the chapter.

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INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 508E.4, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 48, "Viatical and Life Settlements," Iowa Administrative Code.

The rules in Chapter 48 provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made, and safeguards by which viatical settlement providers may be monitored and remain in good standing. The proposed amendments update the rules to reflect recent changes to the National Association of Insurance Commissioners (NAIC) model regulation on viatical settlements. The Division intends that Iowa viatical settlement brokers and providers will comply with these rules for all viatical settlement purchase agreements issued on or after January 1, 2007.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 17, 2006. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319, fax (515)281-3059.

Also, there will be a public hearing on October 17, 2006, at 9 a.m. in the offices of the Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 508E.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend paragraph **48.3(2)"e"** as follows:

e. Has provided proof that the applicant is covered ~~individually~~ by an errors and omissions policy for an amount of not less than $100,000 liability per occurrence and not less than $100,000 total annual aggregate for all claims during the policy period.

ITEM 2. Renumber subrules **48.3(6)** to **48.3(9)** as **48.3(7)** to **48.3(10)** and adopt the following **new** subrule:

48.3(6) Continuing education for viatical settlement broker.

a. A viatical settlement broker licensed as a viatical settlement broker shall complete 36 credits of approved continuing education during each license term as set forth in

INSURANCE DIVISION[191](cont'd)

paragraph 48.3(5)"c." Viatical settlement broker continuing education courses will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. A viatical settlement broker who successfully completes the examination for a viatical settlement broker license will be deemed to have completed sufficient continuing education for the license term in which the viatical settlement broker completed the examination.

b. The required continuing education credits shall include a minimum of:

(1) Eighteen credits in life insurance;

(2) Fifteen credits in viaticals; and

(3) Three credits in ethics.

c. The viatical settlement broker may submit the same completed credits to the division both to meet continuing education requirements for the viatical settlement broker license and to meet the continuing education requirements for an applicable insurance producer license.

d. The license of a viatical settlement broker who fails to comply with this continuing education requirement shall terminate.

e. An instructor of an approved continuing education course shall be granted the same credit as a student who completes the continuing education course, and the instructor may receive such credit once during a license term.

f. A viatical settlement broker cannot carry over from one license term to the next continuing education credits earned in excess of the viatical settlement broker's license term requirements.

g. A viatical settlement broker may receive continuing education credit for self-study courses. A self-study course is considered completed when the continuing education provider receives the completed examination from the viatical settlement broker.

(1) A viatical settlement broker may receive continuing education credit for self-study courses that are part of a recognized national designation program as described in 191—subrule 11.5(5).

(2) A viatical settlement broker may receive continuing education credits for self-study courses that do not meet the requirement of subparagraph (1) if the viatical settlement broker:

1. Submits an affidavit to the continuing education provider that the examination was independently proctored and was completed without any outside assistance, and

2. Correctly answers at least 70 percent of the questions presented.

h. A viatical settlement broker shall not receive continuing education credit for courses taken prior to the issuance of an initial license.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one license term. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. A viatical settlement broker may elect to comply with the continuing education requirements by taking and passing the viatical settlement broker licensing examination.

k. A viatical settlement broker shall demonstrate compliance with the continuing education requirements at the time of license renewal. A viatical settlement broker shall maintain a record of all continuing education courses completed by keeping the original certificates of completion for four years after the end of the year of course completion.

l. For purposes of rule 191—48.3(508E), "credit" means continuing education credit. One credit is 50 minutes of instruction or reading material in an acceptable topic.

ITEM 3. Amend renumbered subrule **48.3(7)**, paragraph **"b,"** as follows:

b. A viatical settlement broker license may be renewed by *demonstration of completion of continuing education as required in subrule 48.3(6) and* payment of $100. If renewal is approved, the license will be renewed effective March 31 of the renewal year, will be valid for three years, and will automatically terminate on March 31 of the following renewal year unless renewed pursuant to ~~this~~ subrule *48.3(7)*.

ITEM 4. Amend rule 191—48.8(508E) by adopting the following **new** subrule:

48.8(3) Immunity from liability. No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this rule or of Iowa Code chapter 508E.

ITEM 5. Amend subrule 48.9(4) as follows:

48.9(4) Before entering into a viatical settlement contract, a viatical settlement provider shall obtain:

a. If the viator is the insured ~~and has a life expectancy of 24 months or less~~, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

b. A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, *a* viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

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IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b.*"

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 4, "Employers," Chapter 6, "Covered Wages," Chapter 11, "Application for, Modification of, and Termination of Benefits," Chapter 12, "Calculation of Monthly Retirement Benefits," Chapter 14, "Death Benefits and Beneficiaries," and Chapter 15, "Dividends," Iowa Administrative Code.

The following paragraphs itemize the proposed changes:

Item 1 allows an IPERS-covered employer to submit proof that its status as a covered employer began earlier than the date previously provided to IPERS as long as the related IPERS coverage applies to all employees who were in covered employment as of the earlier date.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

Items 2 and 3 implement procedures related to the electronic funds transfer of employer contributions to IPERS primarily for the purpose of making information about these procedures more available to employers and other members of the public.

Item 4 changes the contribution rates for regular class members as provided by the legislature effective July 1, 2007.

Item 5 provides that all protection occupation service credit shall constitute "eligible service" in determining benefits entitlement under Iowa Code section 97B.49C, and clarifies that the member's last covered employment must be as a sheriff or deputy sheriff in order to qualify for pre-age 55 nondisability retirement under Iowa Code section 97B.49C.

Item 6 provides that, in order to be eligible for benefits under Iowa Code section 97B.49C, the member's last employment must be as a sheriff or deputy sheriff.

Items 7, 13 and 14 establish procedures for counting employer contributions to various deferred compensation arrangements for retired reemployed members beginning in July 2007.

Item 8 provides an updated citation to the Iowa Code.

Item 9 allows for a longer time period for evaluating the effect of the shortened "bona fide retirement" period offered to licensed health care workers.

Item 10 corrects a scrivener's error regarding the increase in the multiplier for years in excess of 22 for protection members.

Items 11 and 12 provide additional calculation details deemed necessary by IPERS staff to supplement the antispiking provisions adopted by the legislature.

Item 15 makes changes reflecting that line-of-duty death benefits for certain voluntary emergency services personnel will now be paid from the general fund and not IPERS funds.

Items 16 and 17 provide for legislative changes which permit new allocations to the favorable experience dividend (FED) only if IPERS is fully funded before and after such transfers.

There are no waiver provisions included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before October 17, 2006. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator, IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045 or by E-mail to info@ipers.org.

A public hearing will be held on October 17, 2006, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments are intended to implement Iowa Code chapter 97B and 2006 Iowa Acts, House Files 729, 2245 and 2665.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **4.1(1)**, paragraph **"d,"** by adding the following **new** unnumbered paragraph at the end of paragraph **"d"**:

An employer may request a revised beginning date for its status as a covered employer. The employer must submit acceptable proof to IPERS that its status as a covered employer began earlier than the date previously provided. In such case, the employer shall provide IPERS coverage retroactively to all employees providing services to that employer on or after the revised beginning date and shall pay all actuarial costs.

ITEM 2. Amend subrule **4.3(1)** by adding the following **new** unnumbered paragraph at the end of the subrule:

IPERS may also accept the payment of contributions through electronic funds transfer using processes developed by IPERS to implement these electronic transactions. The payments and reports made utilizing the electronic transfer system shall be made according to the procedure described in subrule 4.3(3).

ITEM 3. Amend subrule 4.3(3) as follows:

4.3(3) Wage report and payment of contribution deadlines.

a. For employers filing quarterly employer remittance advice forms *and paying by check*, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the calendar quarter in which the wages were paid ~~and at least five days prior to the wage reports filed for the same period~~. If the fifteenth falls on a weekend or holiday, the remittance is due on the next regularly scheduled workday.

b. For employers filing monthly employer remittance advice forms *and paying by check*, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the month in which wages were paid ~~and, for the third month of a quarter, at least five days prior to wage reports filed for that quarter~~. If the fifteenth falls on a weekend or holiday, the remittance is due on the next regularly scheduled workday.

c. For those employers paying by check, all contributions for the quarter must be received prior to quarterly wage reports being entered into IPERS' wage records. Mail time must be allowed by employers mailing checks.

d. For employers paying contributions by electronic funds transfer, the same payment schedule must be followed as for those employers paying by check; however, wage reports and contributions may be submitted at the same time.

ITEM 4. Amend subrule **4.6(1)** by adding **new** paragraph **"c"** as follows:

c. Effective July 1, 2007, and, except as otherwise provided by law, the following contribution rates shall be effective for members described in this subrule:

	Current	July 1, 2007	July 1, 2008	July 1, 2009	July 1, 2010
Combined rate	9.45%	9.95%	10.45%	10.95%	11.45%
Employer	5.75%	6.05%	6.35%	6.65%	6.95%
Employee	3.70%	3.90%	4.10%	4.30%	4.50%

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ITEM 5. Amend subrule 4.6(5) as follows:

4.6(5) ~~Regular service reclassified as special service~~ *Service reclassification.*

a. ~~Except~~ *Prior to July 1, 2006, except* as otherwise indicated in the implementing legislation or these rules, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall be coded by IPERS staff as special service if certified by the employer as constituting special service under current law. No additional contributions shall be required by regular service reclassified as special service under this paragraph.

b. Effective July 1, 2006, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall continue to be coded by IPERS staff as regular service unless the legislature specifically provides in its legislation for payment of the related actuarial costs of such reclassified service as required under Iowa Code section 97B.65 as amended by 2006 Iowa Acts, House File 729, section 10.

ITEM 6. Amend rule 495—4.6(97B) by adding **new** subrule 4.6(6) and renumbering existing subrules **4.6(6)** and **4.6(7)** as **4.6(7)** and **4.6(8)**, respectively:

4.6(6) Effective July 1, 2006, in the determination of a sheriff's or deputy sheriff's eligibility for benefits and the amount of such benefits under Iowa Code section 97B.49C, all protection occupation service credits for that member shall count toward the total years of eligible service as a sheriff or deputy sheriff. However, this subrule shall not be construed to alter the statutory requirement that a sheriff or deputy sheriff must be employed as a sheriff or deputy sheriff at termination of covered employment in order to qualify for benefits under Iowa Code section 97B.49C as amended by 2006 Iowa Acts, House File 2245, section 5.

ITEM 7. Amend rule **495—6.3(97B)** by adding **new** subrule 6.3(13) as follows:

6.3(13) Employer contributions as remuneration counted against the reemployment earnings limit. Employer contributions made on behalf of retired reemployed members to tax qualified and nonqualified retirement and deferred compensation plans and to other fringe benefit arrangements, excluding health insurance plans and programs, shall constitute remuneration from employment which shall be applied to the reemployment earnings limits and reductions set forth under rule 495—12.8(97B). Such contributions, even if counted as remuneration hereunder, shall not be counted as covered wages, unless the facts in the particular case indicate that, under the circumstances, the arrangement should be treated as covered wages under rules 495—6.1(97B) through 495—6.5(97B). Nonelective employer contributions to the following shall constitute remuneration when determining reemployment earnings limits: tax qualified retirement and deferred compensation plans, all nonqualified retirement plans and deferred compensation arrangements, IRAs, rabbi, secular, and other trust arrangements, split dollar and other life insurance arrangements, and long-term care insurance.

ITEM 8. Amend subrule 11.2(5) as follows:

11.2(5) Mandatory distribution of small inactive accounts. As soon as practicable after July 1, 2004, IPERS shall distribute small inactive accounts to members and beneficiaries as authorized in ~~2004 Iowa Acts, House File 2262, section 28~~ *Iowa Code section 97B.48(5).*

ITEM 9. Amend subrule 11.5(2), introductory paragraph, as follows:

11.5(2) Bona fide retirement—licensed health care professionals. For retirees whose first month of entitlement is no earlier than July 2004 and no later than ~~June 2006~~ *June 2010*, a retiree who is reemployed as a "licensed health care professional" by a "public hospital" does not have a bona fide retirement until all employment with covered employers is terminated for at least one month. In order to receive retirement benefits, the member must file a completed application for benefits form before returning to any employment with a covered employer.

ITEM 10. Amend subparagraph **12.1(6)"f"(4)** as follows:

(4) For each member retiring on or after July 1, 2003, 60 percent plus, if applicable, an additional ~~.25~~ *.375* percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 12 additional percentage points.

ITEM 11. Amend subrule 12.1(7) as follows:

12.1(7) Average covered wages.

a. "Three-year average covered wage" means a member's covered calendar year wages averaged for the highest three years of the member's service. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, IPERS may determine the wages for the third year by computing the final quarter or quarters of wages to complete the year. The computed year wages shall not exceed the maximum covered wage in effect for that calendar year. Furthermore, for members whose first month of entitlement is January of 1999 or later, the computed year shall not exceed the member's highest actual calendar year of covered wages by more than 3 percent. *Effective July 1, 2007, a member's high three-year average wage shall be the greater of (1) the member's high three-year average covered wage based on covered wages reported through June 30, 2007; or (2) the member's high three-year average covered wage after application of the antispiking control as described in paragraph "c" below.*

b. No change.

c. Antispiking limit on the growth of a member's high three-year average.

(1) Selection of the control year shall give highest priority to calendar years of wages in which there are four quarters of service credit for wages on file not used in the high three-year average wage calculation. For example, if the member receives $20,000 of wages for a calendar year with four quarters of service credit for wages, and the member also has received $30,000 of wages for a calendar year with three quarters of service credit for wages, the control year selection process shall give preference to the calendar year with $20,000 of reported wages.

(2) "Service credit for wages" means service credit recorded for:

1. Quarters in which the member receives covered wages from covered employment.

2. Quarters in which the member is credited with covered wages due to a military leave.

3. Quarters in which the member would have had covered wages but for the application of the IRS covered wage limitations.

4. Quarters in which an employee of a nine-month institution receives service credit for a qualifying leave of absence under 495—subrule 7.1(2).

5. Quarters in which a legislator, legislative employee, or elected official receives service credit for employment.

(3) If none of the calendar years of wages that fall outside of the high three-year average wage calculation have service credit for wages reported in all four quarters, the control year will then be the lowest of the high three calendar years of wages with service credit for wages in all four quarters being used in the high three-year average wage calculation.

(4) If none of the wage years used in the high three-year average wage calculation have service credits for wages reported in all four quarters, the control year will then revert to the highest calendar year of wages not included in the high three-year average wage calculation, regardless of whether there are fewer than four quarters with service credits for wages on file.

(5) For high three-year average wage calculations that utilize the computed year, the control year may be the calendar year from which the "average quarters" used in the computed year are drawn. However, the control year cannot be the computed year, as the computed year will never be a calendar year with service credit for wages in all four quarters.

ITEM 12. Amend subrule 12.2(1) as follows:

12.2(1) The initial monthly benefit for the retired member will be calculated utilizing the ~~highest three calendar years of~~ wages that have been reported as of the member's retirement *and subject to the requirements of subrule 12.1(7).* When the final quarter(s) of wages is reported for the retired member, a recalculation of benefits will be performed by IPERS to ~~determine if the "computed year" as described in Iowa Code section 97B.1A(24) and subrule 12.1(7) or the final calendar year is to be used in lieu of the lowest of the three calendar years initially selected~~ *redetermine the member's benefit amount*. In cases where the recalculation determines that the benefit will be changed, the adjustment in benefits will be made retroactive to the first month of entitlement. The wages for the "computed year" shall not exceed the highest covered wage ceiling in effect during the member's period of employment.

ITEM 13. Amend subrule **12.8(2)**, paragraph **"c,"** as follows:

c. A member may elect in writing to have the member's monthly retirement allowance suspended in the month in which the member's remuneration exceeds the amount of remuneration permitted under this rule in lieu of receiving a reduced retirement allowance under paragraph "a" of this subrule. If the member's retirement allowance is not suspended timely, the overpayment will be recovered pursuant to paragraph "a" of this subrule. The member's retirement allowance shall remain suspended until the earlier of January of the following calendar year or the member's termination of covered employment. The member's election shall remain binding until revoked in writing. *Effective July 1, 2007, "remuneration" shall include those amounts as described in 495—subrule 6.3(13).*

ITEM 14. Amend subrule 12.8(3) as follows:

12.8(3) A member who is reemployed in covered employment after retirement may, after again retiring from employment, request a recomputation of benefits. The member's retirement benefit shall be increased if possible by the addition of a second annuity, which is based on years of reemployment service, reemployment covered wages and the benefit formula in place at the time of the recomputation. A maximum of 30 years of service is creditable to an individual retired member. If a member's combined years of service exceed 30, a member's initial annuity may be reduced by a fraction of the years in excess of 30 divided by 30. The second retirement benefit will be treated as a separate annuity by IPERS. Any contributions that cannot be used in the recomputation of benefits shall be refunded to the employee and the employer.

Effective July 1, 1998, a member who is reemployed in covered employment after retirement may, after again terminating employment for at least one full calendar month, elect to receive a refund of the employee and employer contributions made during the period of reemployment in lieu of a second annuity. If a member requests a refund in lieu of a second annuity, the related service credit shall be forfeited.

Effective July 1, 2007, employer contributions described in 495—subrule 6.3(13) shall constitute "remuneration" for purposes of applying the reemployment earnings limit and determining reductions in the member's monthly benefits but shall not be considered covered wages for IPERS benefits calculations.

ITEM 15. Amend 495—Chapter 14 by adding the following **new** rule:

495—14.14(97B) Procedures for deaths of certain voluntary emergency services personnel occurring in the line of duty. Effective July 1, 2006, for a member who dies while performing the functions of a voluntary emergency services provider as described under Iowa Code section 85.61 or 147A.1, benefits for deaths occurring in the line of duty shall be paid pursuant to Iowa Code section 100B.11 and not under Iowa Code section 97B.52 as amended by 2006 Iowa Acts, House File 2665, section 2.

ITEM 16. Amend subrule 15.2(1) as follows:

15.2(1) Allocation of favorable experience. The system shall ~~annually allocate~~, *following the first annual actuarial evaluation in which IPERS is found to be fully funded, determine by rule the allocation of* the system's favorable actuarial experience, if any, between the reserve account created under Iowa Code section 97B.49F(2) and the remainder of the retirement fund ~~according to the following schedule~~.

~~Years to Amortize Unfunded Liability~~	~~Percentage to FED Reserve~~
~~Greater than 0 but less than or equal to 3~~	~~50%~~
~~Greater than 3 but less than or equal to 6~~	~~35%~~
~~Greater than 6 but less than or equal to 9~~	~~25%~~
~~Greater than 9 but less than or equal to 12~~	~~15%~~
~~Greater than 12 but less than or equal to 15~~	~~5%~~
~~Greater than 15~~	~~0%~~

~~The portion of the favorable actuarial experience that is not allocated to the FED reserve as provided above will be retained and used by the system to pay down its unfunded actuarial accrued liability, except as otherwise required by Iowa Code section 97B.49F(2)"c."~~ *Effective July 1, 2006, IPERS shall in no event credit amounts attributable to favorable experience to the FED reserve account, unless IPERS is fully funded and will remain fully funded after such amounts are credited to the FED reserve account. "Fully funded" means that the funded ratio as determined under 2006 Iowa Acts, House File 729, section 1, remains at least 100 percent following the allocation of favorable experience to the FED reserve account.*

ITEM 17. Rescind and reserve subrule **15.2(5)**.

ARC 5391B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 91C.6, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 150, "Construction Contractor Registration," Iowa Administrative Code.

The proposed amendments strike the requirement that contractors using more than one name obtain separate registration numbers for each name and change the format of registration numbers.

The purpose of these amendments is to implement legislative intent.

If requested by the close of business on October 31, 2006, a public hearing will be held on November 1, 2006, at 9 a.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered in adoption no later than November 1, 2006, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

These amendments are intended to implement Iowa Code chapter 91C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 875—150.3(91C) as follows:

875—150.3(91C) Registration required. Before performing any construction work in this state, a contractor shall be registered with the division. ~~If a contractor does business under more than one name, the contractor shall obtain a registration number for each name under which the contractor is doing business.~~ A joint venture is an independent entity and shall be registered independently.

ITEM 2. Amend rule 875—150.7(91C) as follows:

875—150.7(91C) Registration number issuance. Within 30 days of receipt of a completed application, the commissioner will issue to the contractor a ~~public~~ registration number. The registration number will ~~be a five-digit number followed by a two-digit number indicating the year of issuance~~ *consist of the letter "C" followed by six unique digits*.

ARC 5385B

NATURAL RESOURCES DEPARTMENT[561]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455A.4, the Director of the Department of Natural Resources hereby gives Notice of Intended Action to rescind Chapter 7, "Rules of Practice in Contested Cases," Iowa Administrative Code, and to adopt a new Chapter 7 with the same title.

The purpose of this amendment is to make changes to Chapter 7 which address recurring procedural issues and to clarify practices of the Department.

The Department is an "umbrella" agency, and these changes will be made applicable to all parts of this umbrella agency in subsequent rule-making actions by the Director for the Energy and Geological Resources Division[565], by the Environmental Protection Commission [567], by the Natural Resource Commission[571], and by the State Advisory Board for Preserves[575].

Any interested persons may make written suggestions or comments regarding the proposed amendment no later than 4:30 p.m. on October 17, 2006. Written comments should be directed to Anne Preziosi, Department of Natural Resources, Air Quality Bureau, 7900 Hickman, Urbandale, Iowa 50322; telephone (515)281-6243; fax (515)242-5094. Requests for a public hearing regarding this rule making must be submitted in writing to the above address by the above date.

These rules are intended to implement Iowa Code sections 17A.3 and 455A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 561—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
RULES OF PRACTICE IN CONTESTED CASES

561—7.1(17A,455A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department of natural resources, as defined in rule 561—7.2(17A,455A). Nothing in this chapter shall be construed to grant a right to a contested case proceeding when the Iowa Code does not specifically provide for a contested case, except that vendor appeal contested case proceedings may be conducted according to the provisions of 561—Chapter 8.

561—7.2(17A,455A) Definitions. When used in this chapter:

"Agency" means the commission or the director, as appropriate, having statutory jurisdiction over a particular contested case.

"Commission" means the natural resource commission or the environmental protection commission, as designated in

Iowa Code chapter 455A as having appellate jurisdiction over a particular matter.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Department" means the department of natural resources.

"Director" means the director of the department or an authorized representative.

"Party" means a person named and admitted as a party.

"Presiding officer" means an administrative law judge employed by the department of inspections and appeals or the agency, as provided in rule 561—7.7(17A,455A).

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the agency did not preside.

561—7.3(17A,455A) Time requirements.

7.3(1) Computation. In computing any period of time prescribed or allowed by this chapter or by an applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday; otherwise Saturdays, Sundays and legal holidays shall be included in computing the period.

7.3(2) Change. Except for good cause stated in the record, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments before extending or shortening the time to take any action. When by these rules, or by notice given under them, an act is required or allowed to be done within a specified period of time, the presiding officer may, at any time, exercise discretion and may:

a. With or without motion or notice, for good cause, order the period extended if a request is made before the expiration of the period originally prescribed or as extended by a previous order, or

b. Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect, except as provided in rule 561—7.13(17A,455A).

7.3(3) Mail. Any documents filed with the department by mail pursuant to these rules shall be deemed filed on the date of postmark.

561—7.4(17A,455A) Appeal.

7.4(1) Time. Any person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department's action, unless a shorter time period is specified by a particular statute or rule governing the subject matter or by the agency action in question. The written notice of appeal shall be filed with the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319.

7.4(2) Content. Each appeal shall contain:

a. The name and address of the appellant,

b. A description of the specific portion or portions of the agency action that are being appealed, and

c. A short and plain statement of the reasons the specific agency action is being appealed.

561—7.5(17A,455A) Commencement of contested case—notice of hearing.

7.5(1) Transmittal of appeal. Except as provided in subrule 7.5(2), the department shall transmit the appeal and request for a contested case proceeding to the department of inspections and appeals, or shall otherwise transmit the appeal to the presiding officer, when it determines that the appeal was timely filed and the requester is entitled to a contested case proceeding. When the appeal is from an administrative order, the order shall be transmitted with the appeal.

7.5(2) Petition from the department. After the department seeks to suspend or revoke a permit or license, institute licensee disciplinary proceedings, or otherwise commence a contested case, it shall file a petition as described in subrule 7.12(1).

7.5(3) Notice of hearing issued. A contested case commences when a notice of hearing is delivered to a party. A notice of hearing will be prepared and issued by the presiding officer when:

a. The department receives a notice of appeal from a person other than the department, or

b. A petition from the department is filed, as provided in subrule 7.5(2).

7.5(4) Delivery of notice of hearing. Delivery of the notice of hearing may occur by personal service or publication as provided in the Iowa Rules of Civil Procedure; by certified mail, return receipt requested; or as otherwise required by statute.

7.5(5) Contents of notice of hearing. The notice of hearing shall contain the following information:

a. Identification of the parties, including the name, address and telephone number of the person who will act as advocate for the agency or the state and identification of all the parties' counsel where known;

b. A statement of the time, place and nature of the hearing;

c. A statement of the legal authority and jurisdiction under which the hearing is to be held;

d. A reference to the particular section of the statutes and rules involved;

e. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, then initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

f. Reference to the procedural rules governing informal settlement;

g. Identification of the presiding officer, if known, or if not known, then a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, or administrative law judge from the department of inspections and appeals);

h. The time within which a petition or answer must be filed; and

i. In those cases where the department files the petition pursuant to the provisions of subrule 7.5(2), the notice shall include a copy of the petition and a statement that, in the event an answer is not timely filed in accordance with these rules, judgment may be entered for the relief requested in the petition.

7.5(6) Time for response to notice of hearing. A person served with a notice of hearing shall file a petition or answer as required by subrule 7.12(1) or 7.12(2) within 20 days of receipt of the notice of hearing. Failure to file shall, upon motion, result in the presiding officer entering a default against the person failing to file.

561—7.6(17A,455A) Informal settlement negotiations.

7.6(1) Informal settlement encouraged. Unless precluded by statute, informal settlement of controversies is encouraged when those controversies may culminate in contested case proceedings according to the provisions of Iowa Code chapter 17A and these rules. However, this rule shall not be

construed to require any party other than the department to utilize informal procedures or to settle the controversy pursuant to informal procedures.

7.6(2) Opportunity to pursue informal settlement. A party to a contested case may request an opportunity to pursue informal settlement. The request shall be in writing and shall be delivered to the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319. Upon receipt of the request, further proceedings shall be delayed and no contested case hearing date shall be set, except in the case of emergency orders as provided in rule 561—7.18(17A, 455A). Informal settlement negotiations may include verbal or written communications between or among parties. At the request of any party, the appeal shall be transmitted to the department of inspections and appeals. Settlement negotiations may continue following transmittal.

561—7.7(17A,455A) Presiding officer. Except as otherwise provided in this rule, an administrative law judge employed by the department of inspections and appeals shall preside at contested case hearings.

7.7(1) On motion of a party or on its own motion, the agency may order that the hearing be conducted before the agency or one or more members thereof. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 10 days after service of a notice of hearing which identifies or describes the presiding officer as the agency head or members of the agency. The agency may deny the request only upon a finding that one or more of the following reasons apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding (i.e., there is no conflict of interest because the agency would not act as both party and adjudicator in the contested case proceeding).

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

7.7(2) The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

7.7(3) In a hazardous waste facility site licensing proceeding pursuant to Iowa Code section 455B.446, the hearing shall be before the environmental protection commission, with at least a quorum present, and with an administrative law judge present to assist the commission in ensuring that the requirements of Iowa Code chapter 17A are met.

561—7.8(17A,455A) Disqualification of presiding officer.

7.8(1) Grounds for disqualification.

a. A presiding officer shall not participate in the making of a proposed or final decision if the individual has investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related controversy that may culminate in a case involving the same parties.

b. A presiding officer shall not be subject to the authority, direction or discretion of any person who has investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case or a pending factually related case or controversy involving the same parties.

c. A member of an agency having jurisdiction of a case shall not participate in the making of a final decision or order if the member is employed by, receives directly or indirectly personal income from, or has other substantial connection with a person subject to permit or enforcement action pending before the agency if that person would be substantially affected by the outcome of the case.

d. A presiding officer shall not be biased for or against any party.

7.8(2) Affidavit asserting disqualification.

a. A party may file an affidavit asserting disqualification of a presiding officer under this subrule at any time, except that an affidavit against a member of the commission on appeal or review of the proposed decision shall be filed prior to any hearing on appeal or review of the proposed decision. A determination as to whether that individual should participate shall be made by the agency before further participation by that individual.

b. Any party to a contested case proceeding may file an affidavit alleging a violation of subrule 7.8(1), and the agency shall determine the matter as part of the record in the contested case. When an agency makes such a determination with respect to any agency member, that determination shall be subject to de novo judicial review in any appeal of the contested case decision.

561—7.9(17A,455A) Separation of functions and ex parte communications.

7.9(1) Separation of functions. A staff attorney for the department shall perform the investigative and prosecuting functions for the department. Additional employees of the department may be designated by the director to perform these functions as necessary during the course of the case. No person performing these functions shall participate or advise in any decision arising out of that case except as witness or counsel in public proceedings.

7.9(2) Communications initiated by administrative law judge or agency member.

a. Except as provided in paragraphs 7.9(2)"b" and "c," or unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, the presiding officer and members of the agency having jurisdiction of the case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that case with any person or party or representative of any party, or any other person with a direct or indirect interest in such case. Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate to the extent permitted or allowed by Iowa Code chapter 21, "Official Meetings Open to Public (Open Meetings)."

b. The presiding officer having jurisdiction of a case may communicate in connection with issues of fact or law in the case, upon notice and opportunity for all parties to participate. Where members of the agency are acting as the presiding officer(s), they may communicate in connection with issues of fact or law in the case, upon notice and opportunity for all parties to participate and to the extent permitted by Iowa Code chapter 21, "Official Meetings Open to Public

(Open Meetings)." Notice of the time and place of the discussion and the issues of fact or law to be discussed shall be delivered by first-class mail to the parties. The discussion shall not extend to issues of fact or law not specified in the notice unless all parties participate in the discussion. The time of the discussion shall not be sooner than ten days after receipt of the notice.

c. The presiding officer or members of the agency having jurisdiction of the case may communicate with members of the department and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. All employees of the department other than those performing the investigative and prosecuting functions in the case shall be available to advise the agency and presiding officer on any of those employees' functions relating to the case and any appeal, provided communications with those employees meet the above specifications.

7.9(3) Communications initiated by parties.

a. Unless required for the disposition of ex parte matters specifically authorized by statute, parties, including the department, or their representatives in a case, and persons with a direct or indirect interest in such a case, shall not communicate directly or indirectly in connection with any issue of fact or law in that case with the presiding officer or members of the agency having jurisdiction of the case, except upon notice and opportunity for all parties to participate, as provided in paragraph 7.9(2)"b."

b. Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

c. The presiding officer or members of the agency should refuse to discuss issues of fact or law with parties unless notice and opportunity for hearing has been given to all parties. A copy of any written ex parte communication or summary of oral ex parte communication received from a party, which directly or indirectly relates to any issue of fact or law in the case, shall be transmitted by the presiding officer to the other parties, and the presiding officer shall include the written communication or summary in the record.

d. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

e. The presiding officer may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

f. The presiding officer may render a proposed or final decision imposing appropriate sanctions, including default, for violations of rule 561—7.9(17A,455A); make a decision against the offending party; or censure, suspend or revoke the privilege to practice before the agency.

561—7.10(17A,455A) Consolidation and severance.

7.10(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

7.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceeding or a portion thereof severed.

561—7.11(17A,455A) Intervention.

7.11(1) Motion to intervene. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervener, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 20 days of receipt of the motion to intervene unless the time period is extended or shortened by the presiding officer.

7.11(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervener shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely interveners for continuances which would delay the proceeding will ordinarily be denied.

7.11(3) Grounds for intervention. The movant shall demonstrate that:

a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

b. The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and

c. The interests of the movant are not adequately represented by existing parties.

7.11(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceeding. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervener or otherwise condition the intervener's participation in the proceeding.

561—7.12(17A,455A) Pleadings. Pleadings are the parties' written statements of their respective claims or defenses. They do not include motions. The only allowable pleadings shall be the petition and the answer.

7.12(1) Petition.

a. Who must file. In all cases where an action of the department is appealed, the party aggrieved by the action shall file the petition. In those cases where the department seeks to suspend or revoke a license or permit, the department shall file the petition.

b. Time for filing. Any petition required to be filed by a party other than the department shall be filed within 20 days of receipt of the notice of hearing, unless the presiding officer allows additional time.

c. Content. The petition shall include all of the following items, in separately numbered paragraphs:

(1) The basis for the agency's jurisdiction over the matter;

(2) A detailed discussion of the relief demanded and the supporting facts, including any supporting documentation relied upon for relief;

(3) The particular provisions of the statutes and rules involved;

(4) The name(s) of the party or parties on whose behalf the petition is filed; and

(5) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

7.12(2) Answer.

a. Who must file. In all cases where an action of the department is appealed, the department shall file the answer. In those cases where the department seeks to suspend or revoke a license or permit, the holder of the license or permit shall file the answer.

b. Time for filing. The answer shall be filed within 20 days of receipt of the petition.

c. Content of answer. The answer shall state on whose behalf it is filed and shall specifically admit or deny each allegation or paragraph of the petition. It shall state any facts deemed to show a defense; it may raise points of law appearing on the face of the petition; and it may contain as many defenses, legal or equitable, as the pleader may claim, which defenses may be inconsistent. The answer also shall state the name, address and telephone number of the person filing the answer and the person's attorney, if any.

d. Matters admitted and defenses waived. Any allegation in the petition not denied in the answer shall be deemed admitted. Any defense not raised in the answer which could have been raised at that time on the basis of facts then known shall be deemed waived, except for subject matter jurisdiction.

e. Failure to answer. If the party required by this subrule to file an answer fails to file an answer within 20 days of receipt of the notice of hearing or petition, a default shall, upon motion, be entered by the presiding officer.

7.12(3) Amendment. Any notice of hearing, petition, or other charging document (document asserting a party's position) may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

7.12(4) Form. All pleadings shall:

a. Contain a caption in the following form:

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES, DES MOINES, IOWA

IN THE MATTER OF (NAME OF PARTY OTHER THAN THE DEPARTMENT)	(NAME OF PLEADING) NO. _____

b. Be legibly printed or typewritten on white paper. The impression shall be on one side of the paper only and the lines shall be double-spaced, except quotations of two or more lines, which shall be single-spaced and indented. Standard letter-size paper (8½″ × 11″) shall be used.

c. Be signed by the person filing the pleading.

7.12(5) Filing and service of pleadings. The original of all pleadings shall be filed with the presiding officer, and a copy of all pleadings shall be contemporaneously served upon the other parties. Filing and service of pleadings shall be by first-class mail or personal service. No return of service shall be required.

7.12(6) Docketing. Upon receipt of a pleading, the presiding officer shall docket the pleading in a docket kept for that purpose and shall assign a number to the case which shall be placed on all subsequent pleadings filed in the case.

561—7.13(17A,455A) Defaults.

7.13(1) Defaults defined. A party shall be in default when it:

a. Fails to file a pleading within the time prescribed for filing of the pleading;

b. Withdraws a pleading without permission to replead;

c. Fails to comply with any order of the presiding officer; or

d. Fails to appear for a contested case proceeding after proper service of notice. If a party fails to appear and participate in a contested case proceeding after proper service of notice, then the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision on the merits in the absence of the party. If a decision on the merits is rendered, the sole remedy to set aside the judgment is a motion to vacate made consistent with the provisions of subrule 7.17(7).

7.13(2) How entered. If a party is in default, the presiding officer on motion of the adverse party shall enter the default against the party.

7.13(3) Contents of decision. A default decision shall contain the presiding officer's reasons for the decision. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues. Unless the defaulting party has appeared before the presiding officer, the relief shall not exceed the demand for relief. A default decision may provide either that the default decision is to be stayed pending a timely motion to set aside or that the default decision is to take effect immediately.

7.13(4) Setting aside default.

a. For good cause shown, the presiding officer may set aside a default or order thereon due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. The exclusive remedy for an order based on default shall be a timely motion to set aside the default.

b. A motion to set aside a default must be filed promptly after the discovery of the grounds, but in no case shall the motion be filed more than ten days after receipt of the order. Default decisions shall become final agency action unless a motion to set aside the default is timely filed.

(1) Contents of motion. A motion to set aside a default shall state all facts relied upon by the moving party and shall establish that good cause existed for that party's default status. If the party is in default due to failure to appear for a contested case proceeding, then each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

(2) Further appeal stayed. The time for further appeal of a decision for which a motion to set aside the default has been filed is stayed pending a decision on the motion to set aside the default.

(3) When granted. The burden of proof to show good cause to set aside the default due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty is on the

moving party. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's timely filed response to the motion.

7.13(5) Appeal of denial of motion to set aside default.

a. If a timely motion to set aside a default is denied, it may be followed by an appeal to the agency having jurisdiction of the matter. The issues on appeal are limited to the grounds for denial of the motion to set aside default. Review is limited to whether the denial of the motion was arbitrary or capricious and whether there is a showing of good cause to set aside default due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.

b. Upon a finding by the agency of good cause, the default shall be set aside. The hearing shall be completed, with proper notice, before appeal on the subject matter of the case shall be permitted.

561—7.14(17A,455A) Prehearing procedures.

7.14(1) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such dispute or fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, then as soon as practicable the parties shall jointly submit to the presiding officer a schedule detailing the method and timetable for submission of the record, briefs, and oral argument. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to paragraph 7.14(2)"e."

7.14(2) Motions.

a. Form of motion. No technical form for motions is required. However, prehearing motions must be in writing, must state the grounds for relief, and must state the relief sought.

b. Time for response to motions. Any party may file a written response to a motion within 10 days after service of the motion, unless the time period is extended or shortened by rules of the agency or the presiding officer. Failure to respond within the required time period may be deemed a waiver of objection to the granting of the motion.

c. Oral argument on motions. The presiding officer may schedule oral argument on any motion.

d. Time for filing. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the presiding officer.

e. Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rules of Civil Procedure 1.981 through 1.983 and shall be subject to disposition according to the requirements of those rules to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served either at least 30 days prior to the scheduled hearing date, or during another time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 7.17(6) and appeal pursuant to subrule 7.17(5).

7.14(3) Discovery.

a. In general. The discovery procedures available to parties in civil actions are available to parties to a contested case. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. Motions relating to discovery. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.3(2). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

c. Evidence obtained in discovery. Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

d. Prior statements or reports of witnesses. When a party relies on a witness who has made prior statements or reports with respect to the subject matter of the witness's testimony, it shall, upon request, make the statements or reports available to a party for use on cross-examination unless the statement is confidential under 561—Chapter 2. If the statement or report is confidential under 561—Chapter 2, it may be made available, but it may be made subject to a protective order.

e. Disclosure of evidence and witnesses. At a prehearing conference or within some reasonable time set by the presiding officer prior to the hearing, each party shall make available, upon request, to the other parties the names of expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Amendments and additions to these materials may be made no later than ten days prior to the date of the hearing. However, following a prehearing conference held in accordance with subrule 7.14(5), witnesses, documents or exhibits may be added only if the moving party can show that they were not readily identifiable with reasonable diligence prior to the prehearing conference and that the addition is necessary to prevent manifest injustice.

7.14(4) Subpoenas.

a. Issuance. A subpoena shall be issued to a party upon request to the presiding officer. Such a request may be oral or in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Service and expenses. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

c. Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

7.14(5) Prehearing conference.

a. Matters considered. After filing of the pleadings, the presiding officer may, and shall upon the request of one of the parties, direct the parties to appear at a specified time and

place before the presiding officer for a prehearing conference to consider, so far as is applicable to the particular hearing:

(1) The possibility or desirability of waiving any provisions of this chapter by written stipulation representing an informed mutual consent;

(2) The necessity or desirability of amending pleadings;

(3) Agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of evidence;

(4) Limiting the number of witnesses;

(5) Settling on facts of which the presiding officer is to be asked to take official notice;

(6) Stating and simplifying the factual and legal issues to be decided in the contested case;

(7) The procedure at the hearing;

(8) Rescheduling the time and place of the hearing set forth in the notice of hearing to a date that will allow the parties and witnesses to prepare for and participate in the hearing;

(9) Other matters which may aid, expedite or simplify the disposition of the proceeding.

b. Stipulations. Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or should not fairly be in dispute.

c. Order or statement of agreement. Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter into a written stipulation as to the matters or agree to the statement thereof made on the record by the presiding officer.

d. Objections. When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that the order does not fully or correctly embody the agreement at the conference. Thereafter, the terms of the order or modification shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

7.14(6) Continuance. Unless otherwise provided, applications for continuance shall be made to the presiding officer. Applications for continuance may be made orally or in writing, unless otherwise specified by the presiding officer. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

7.14(7) Prehearing telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate.

7.14(8) Emergency orders. Prehearing procedures for emergency orders are set forth in rule 561—7.18(17A, 455A).

561—7.15(17A,455A) Hearing procedures.

7.15(1) Conduct of proceedings. A hearing shall be conducted by a presiding officer who shall:

a. Open the record and receive appearances;

b. Administer oaths;

c. Enter the notice of hearing into the record;

d. Receive testimony and exhibits presented by the parties;

e. In the administrative law judge's discretion, interrogate witnesses;

f. Rule on objections and motions;

g. Close the hearing;

h. Issue an order containing findings of fact and conclusions of law.

Additionally, the presiding officer may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

7.15(2) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

7.15(3) Failure to appear. If a party fails to appear after proper service of notice of hearing, the presiding officer may adjourn, may enter a default against the absent party, or may proceed with the hearing and make a proposed decision in the absence of the party. Adjournment may be granted by the presiding officer on the presiding officer's own motion in the interest of justice.

7.15(4) Representation at hearings. Parties have the right to participate in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may, at its own expense, be represented by an attorney.

7.15(5) Appearance pro se. If a party other than the department appears on the party's own behalf without counsel, the presiding officer shall explain to the party the rules of practice and procedure and generally conduct the hearing in a less formal manner than that used when a party is represented by counsel.

7.15(6) Attendance and participation of the public. Every hearing before an agency of the department or an administrative law judge shall be open to the public.

7.15(7) Introduction of evidence. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

7.15(8) Fees. Each party bears all costs and expenses, including fees, for its own witnesses.

7.15(9) Objections. All objections shall be timely made and stated on the record.

7.15(10) Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly. Contemptuous conduct is grounds for removal from the hearing.

7.15(11) Recording of hearing.

a. Method of recording. Oral proceedings in connection with a hearing in a case shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs thereof.

b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of mechanized records of oral proceedings may be obtained from the presiding officer at the requester's expense.

7.15(12) Telephone hearings. Hearings may be conducted via telephone upon order of the presiding officer and with the consent of all parties.

561—7.16(17A,455A) Evidence.

7.16(1) Ruling on evidence. The presiding officer shall rule on admissibility of evidence.

7.16(2) Admissibility in general. Evidence that is relevant and material shall be admitted unless it is unduly repetitious. Relevant and material evidence may be admitted even though inadmissible in a jury trial.

7.16(3) Issues restricted. Evidence in the proceeding shall be confined to the issues that have been expressed in the appealed action, the appeal, the petition and the answer.

7.16(4) Stipulation. Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.16(5) Privilege. The rules of privilege recognized by law shall be given effect.

7.16(6) Examination of exhibits. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

7.16(7) Documentary evidence. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

7.16(8) Examination and cross-examination. Witnesses at the hearing shall be examined orally, under oath. Witnesses at the hearing, or persons whose testimony has been submitted in written form, shall be subject to cross-examination by any parties as necessary for a full and true disclosure of facts. The presiding officer may limit the examination or cross-examination or both when necessary for orderly presentation of evidence.

7.16(9) Sequestration of witnesses. Witnesses may be sequestered during the hearing.

7.16(10) Objections to evidence. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.16(11) Offer of proof. Whenever evidence is deemed inadmissible, the party offering the evidence may make an offer of proof which shall be noted in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence excluded consists of a document or exhibits, it shall be inserted in the record. In the event that the agency decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of the evidence or, where appropriate, the agency may evaluate the evidence and proceed to a final decision.

7.16(12) Official notice. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed, and their source, including any staff memoranda or data. The parties may contest these facts before decision is announced.

7.16(13) Evaluation of evidence. The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence.

561—7.17(17A,455A) Posthearing procedures and orders.

7.17(1) Filing by parties of briefs and proposed findings. Within 30 days after the last evidence is taken, each party may file with the presiding officer proposed findings of fact, conclusions of law, a proposed order or decision complying with subrule 7.17(3), and a supporting brief. Each party may, within the same period, file with the presiding officer a brief concerning any relevant matters at the hearing. Copies of these documents shall be served upon each of the other parties. Within 20 days thereafter, each party may file a brief which takes specific exception to matters contained in an opposing brief or which contains alternative findings of fact, conclusions of law, and proposed order. The briefing schedule, including waiver of briefs, shall be determined at the close of the hearing.

7.17(2) Final decision or order.

a. When the agency presides at the reception of evidence, the decision of the agency is a final decision.

b. When the agency does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision or order of the presiding officer becomes the final decision or order of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided in paragraph 7.17(5)"a."

7.17(3) Decisions and orders.

a. By whom prepared. The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a case unless the presiding officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. Content of decision or order. The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed findings of fact in accordance with subrule 7.17(1), the decision or order shall include a ruling upon each proposed finding. The decision shall include an explanation as to why the relevant evidence in the record supports each material finding of fact.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. Delivery. A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

7.17(4) The record.

a. Content of record. The record shall include:

(1) All pleadings, motions and intermediate rulings;

(2) All evidence received or considered and all other submissions;

(3) A statement of all matters officially noticed;

(4) All questions and offers of proof and objections and rulings thereon;

(5) All proposed findings and exceptions;

(6) The decision, opinion or report by the presiding officer.

b. By whom prepared. The presiding officer shall prepare the record for each case.

7.17(5) Appeal and review. Any adversely affected party may appeal a proposed decision. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. The agency having jurisdiction shall review the proposed decision.

a. Time allowed.

(1) Appeal by party. An appeal by a party shall be made to the agency having jurisdiction of the proceeding and shall be taken within 30 days after receipt of the proposed decision or order.

(2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of the proposed decision or at the next regular meeting of the relevant commission, whichever date last occurs. The agency shall preside in the case of review of a proposed decision of the administrative law judge or appeal board on motion of the agency.

b. Notice. Appeal is taken and perfected by filing with the director a timely notice of appeal signed by the appellant or the appellant's attorney. It shall specify the parties taking the appeal and the final decision or order or part thereof appealed. The notice shall set forth, with particularity, the conclusions of law or findings of fact appealed. It shall be the appellant's responsibility to immediately serve the notice of appeal upon all parties of record other than the appellant.

c. Request for transcript. A request for a transcript or a copy of the electronic recording of a hearing on a matter appealed shall be made at the time of the filing of a notice of appeal.

d. Scheduling. The director shall issue a schedule for consideration of the appeal.

e. Briefs and arguments. Unless otherwise ordered, within 20 days of receipt of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The agency may resolve the appeal on the briefs or provide an opportunity for oral argument. The agency may shorten or extend the briefing period as appropriate.

f. Agency review. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issue. If the agency limits the issues, notice of this limitation shall be provided in writing to the parties. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or the agency may reverse or modify any conclusion of law that the agency finds to be in error. When reviewing a proposed decision upon intra-agency appeal, the agency having jurisdiction shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers, unless otherwise provided by law.

7.17(6) Applications for rehearing.

a. By whom filed. Any party to a contested case may file an application for rehearing.

b. Content of application. The application shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

c. Time of filing. The application for rehearing shall be filed with the director within 20 days after the receipt of the final decision.

d. Notice to other parties. A copy of the application for rehearing shall be immediately mailed by the applicant to all parties of record not joining therein.

e. Disposition. Any application for rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

7.17(7) Motion to vacate.

a. By whom filed. A motion to vacate may be filed by any party to a contested case.

b. Form of motion. A motion to vacate shall be in writing, shall state on whose behalf it is filed, and shall state the specific grounds for relief.

c. Time of filing. A motion to vacate must be filed within 30 days after receipt of the final decision.

d. Notice to other parties. A copy of the motion to vacate shall be immediately mailed by the moving party to all parties of record not joining therein.

e. Granting of motion to vacate. A motion to vacate may be granted if the presiding officer finds that any of the following grounds exist:

(1) The moving party experienced unavoidable casualty or misfortune preventing the moving party from participating during the contested case process; or

(2) The moving party has material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the contested case hearing, and was not discovered within the time for making an application for rehearing under subrule 7.17(6).

7.17(8) Stays of agency action.

a. When available.

(1) Any person appealing an action of the department, other than an emergency action taken pursuant to the provisions of rule 561—7.18(17A,455A), may petition the presiding officer for a stay of the department's action or a part thereof pending its review. The petition for stay shall state the reasons justifying a stay. Whenever possible, an appellant should seek a stay upon the filing of an appeal. An appellant who fails to promptly file for a stay does so at that party's risk.

(2) Any party adversely affected by a final decision or order, other than an emergency order which is governed by rule 561—7.18(17A,455A), may petition the agency for a stay of the final decision or order pending judicial review. The petition for stay shall be filed with the director within ten days of receipt of the final decision or order, and shall state the reasons justifying a stay.

b. When granted. The presiding officer or agency, as appropriate, shall consider the factors listed in Iowa Code section 17A.19(5)"c" when considering whether to grant a stay.

c. Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

561—7.18(17A,455A) Emergency proceedings.

7.18(1) Necessity of emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the Iowa Constitution and other provisions of law, the agency may issue a written emergency administrative order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency administrative order, the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency administrative order may continue to engage in alternative activities without posing immediate danger to public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect public health, safety and welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

7.18(2) Contents of order. An emergency administrative order shall contain the following:

a. Findings of fact,

b. Conclusions of law, and

c. Policy reasons for the decision if it is an exercise of the agency's discretion.

7.18(3) Delivery of emergency order. To the degree practicable, the department shall select the procedure for delivery of an emergency administrative order that best ensures prompt, reliable delivery. An emergency order shall be delivered immediately to the person or persons who are required to comply with the order by utilizing one or more of the following procedures:

a. Personal delivery;

b. Certified mail, return receipt requested, to the last address on file with the agency;

c. Certified mail to the last address on file with the agency;

d. First-class mail to the last address on file with the agency; or

e. Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and the person has provided a fax number for that purpose.

7.18(4) Oral notice. Unless the emergency order is delivered by personal delivery on the same day that the order is issued, the agency shall make reasonable immediate efforts to contact by telephone the person or persons who are required to comply with the order.

7.18(5) Stay of order. A person named in an emergency order may request a stay of the order by contacting the director by telephone or by delivery of a written request for stay to the department.

a. Upon receipt of a request for stay of an emergency order, the director shall schedule a hearing to take place within five days of receipt of the request or a longer time as agreed upon by the appellant. The person requesting the stay shall be notified of the time and place of the hearing.

b. The scope of the hearing on a request for stay shall be limited to, and the decision whether to grant a stay shall be based upon, the following factors:

(1) Whether the requester will suffer irreparable injury if a stay is not granted,

(2) Whether the requester is likely to prevail on the merits when the appeal of the order is heard,

(3) Where lies the public interest, and

(4) Whether the rule or statute upon which the order is founded is clearly invalid.

c. The hearing procedures in a decision to grant or deny a stay shall conform with rule 561—7.15(17A,455A).

7.18(6) Decision on merits. Where agreed to by the parties, the appeal of an emergency order may be decided based upon the evidence presented at the hearing for stay. Otherwise, a hearing on the merits shall proceed in accordance with this chapter.

561—7.19(17A,455A) License suspension or revocation and other licensee disciplinary proceedings.

7.19(1) Notice. Except as provided in rule 561—7.18(17A,455A) or in subrule 7.19(3), prior to the suspension or revocation of a license, the department shall give notice of its intent and shall provide an opportunity to be heard at an evidentiary hearing conducted according to the provisions of this chapter. However, according to the provisions of Iowa Code section 455B.219, an evidentiary hearing, and not just the opportunity therefor, must occur prior to revocation or suspension of a license for water treatment.

7.19(2) Content of notice. The notice shall inform the licensee of the department's intent to suspend or revoke the license and shall include:

a. A description of the facts or conduct warranting the suspension or revocation;

b. A statement of jurisdiction and the provision of law which warrants the intended action; and

c. A statement that the licensee may show at a hearing that the licensee meets all lawful requirements to retain the license.

7.19(3) Delivery of notice. Delivery of notice in license revocation or suspension proceedings shall be by personal service or by restricted certified mail.

7.19(4) Time to request hearing. A person entitled to request a hearing according to the provisions of this rule may invoke the right within 30 days of receipt of the notice.

7.19(5) Setting hearing. Upon receipt of a request for a hearing or upon receipt of a notice of intent to revoke or suspend a license according to the provisions of Iowa Code section 455B.291, the presiding officer shall prepare a notice of hearing. The contested case hearing procedures in this chapter shall apply.

7.19(6) Filing of petition and answer. Within 10 days of receipt of the notice of hearing, the department shall file a petition which complies with the provisions of paragraph 7.12(1)"c." An answer complying with the provisions of paragraphs 7.12(2)"c" and "d" may be filed within 10 days of receipt of the petition.

7.19(7) Emergency suspension. A license may be suspended without providing to the licensee a prior opportunity to be heard if the agency having jurisdiction:

a. Finds that the public health, safety or welfare imperatively requires emergency action,

b. Incorporates a finding to that effect in its order,

c. Complies with the provisions of rule 561—7.18(17A, 455A), and

d. Promptly thereafter provides the licensee an opportunity to be heard.

7.19(8) Effective date of suspension or revocation. Except as provided in Iowa Code section 455B.219 and subrule 7.19(7), suspension or revocation pursuant to this rule shall be effective upon:

a. Failure of the licensee to request a hearing within 30 days of receipt of notice of intent to revoke or suspend; or

b. Upon the issuance of an order suspending or revoking the license after hearing.

561—7.20(17A,455A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. The waiver shall be by written stipulation representing an informed, mutual consent. However, the agency, in its discretion, may refuse to give effect to such waiver when it deems the waiver to be inconsistent with the public interest.

These rules are intended to implement Iowa Code section 17A.3 and chapter 455A.

ARC 5399B

PHARMACY EXAMINERS BOARD[657]

Notice of Termination

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4758B**, proposing to amend Chapter 6, "General Pharmacy Practices," and Chapter 21, "Electronic Data in Pharmacy Practice," Iowa Administrative Code.

The Notice proposed to require that a pharmacy utilizing a computerized prescription record system or a record retention system that does not maintain hard-copy records shall be capable of producing, on site, a hard copy of the record or a printout of prescription fill data upon the request of the Board, its representative, or other authorized individual or agency.

The Board is terminating the rule making commenced in **ARC 4758B** based on comments and objections received from members of the pharmacy profession expressing economic concerns. Commenters indicated that many pharmacies utilizing electronic record systems do not currently possess the technology required to comply with the proposed amendments and that necessary changes to those systems would be costly.

ARC 5398B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment was approved at the April 26, 2006, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment requires a pharmacy that intends to close permanently to notify all current patients with active prescriptions of the intended closure. The amendment requires a pharmacy to inform those patients of their right to transfer their active prescriptions to a pharmacy of the patients' choosing. Except for the case of an emergency or unforeseeable closure of the pharmacy, patient notification shall be made at least two weeks prior to the pharmacy's closing.

Requests for waiver or variance of the discretionary provisions of this rule will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on October 17, 2006. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

This amendment is intended to implement Iowa Code sections 155A.13 and 155A.19.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **8.35(7)** by adding **new** paragraph **"b"** as follows and relettering existing paragraphs **"b," "c,"** and **"d"** as paragraphs **"c," "d,"** and **"e"**:

b. Pharmacy patients with active prescriptions on file with a pharmacy that intends to close permanently shall be notified by that pharmacy, via direct mail or public notice at least two weeks prior to the closure of the pharmacy, that each patient has the right to transfer the patient's active prescriptions to a pharmacy of the patient's choosing. This paragraph shall not apply in the case of an emergency or unforeseeable closure including, but not limited to, emergency board action, foreclosure, fire, or natural disaster.

ARC 5397B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.4, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 36, "Discipline," Iowa Administrative Code.

The amendment was approved at the April 26, 2006, regular meeting of the Board of Pharmacy Examiners.

PHARMACY EXAMINERS BOARD[657](cont'd)

The proposed amendment establishes, as a ground for disciplinary action, the failure of a licensee or registrant to timely provide to the Board or the Board's agent prescription fill data or any other required pharmacy or controlled substances record.

Grounds for disciplinary action are not subject to waiver or variance.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on October 17, 2006. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

This amendment is intended to implement Iowa Code sections 124.304, 155A.6, 155A.12, 155A.15, 155A.17, 272C.3, and 272C.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **36.1(4)** by adding **new** paragraph **"ag"** as follows:

ag. Failure to timely provide to the board or a representative of the board prescription fill data or other required pharmacy or controlled substances records.

ARC 5396B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 4, "Weapons," and to adopt new Chapter 91, "Weapons Permits," Iowa Administrative Code.

Iowa Code chapter 724 establishes a system of permitting for persons in Iowa to carry weapons and to acquire handguns. The Department of Public Safety is assigned a number of responsibilities under that chapter, although the primary responsibility for issuing most weapons permits in Iowa rests with county sheriffs. The responsibility for issuing those permits which are not issued by a sheriff resides with the Commissioner of Public Safety. While Iowa Code chapter 724 provides substantial discretion to sheriffs and the Commissioner in issuing permits, particularly permits to carry, that discretion is restricted by a framework established by various provisions of federal and state law. These rules implement procedures, requirements and forms for the issuance and denial of permits.

The current rules on weapons permitting have become somewhat outdated. The amendments proposed herein update outdated provisions and move the weapons permitting rules to new Chapter 91. This is part of a more general initiative to renumber all administrative rules of the Department of Public Safety to make them more accessible to the general public and those who are subject to the provisions of the rules.

The rules proposed herein include the following changes from the current provisions of the weapons permitting rules:

- Several definitions have been added, and others that are no longer needed have been deleted.
- Reference to the form for weapons permit ID cards for peace officers has been removed, as active duty peace officers are no longer required to have weapons permits, pursuant to the federal Law Enforcement Officers Safety Act of 2004.
- Provisions regarding firearms training courses have been updated.
- Certain provisions regarding background investigations required of applicants for weapons permits have been updated.
- The reference to the federal classification of firearms as collectors' items has been updated.

A public hearing on these proposed amendments will be held on October 20, 2006, at 10 a.m. in the third floor conference room at the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on October 20, 2006.

These amendments are intended to implement Iowa Code chapter 724.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **661—4.1(724)** through **661—4.12(17A,724)**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 91
WEAPONS PERMITS

661—91.1(724) Definitions. The following definitions apply to rules 661—91.1(724) to 661—91.7(724):

"Applicant" means a person who is applying for a permit to acquire pistols or revolvers or to carry weapons.

"Approved handgun training program" means a handgun safety training program which includes qualifying on a firing range and which is offered or certified by one of the following organizations:

1. Iowa law enforcement academy.
2. National Rifle Association.

3. U.S. military or Iowa national guard.
4. Another organization approved by the commissioner.

"Certified peace officer" means a person who is certified by the Iowa law enforcement academy as having successfully completed a course of instruction for a peace officer that included a firearms training program and who is currently employed by an Iowa law enforcement agency which requires current certification.

"Commissioner" means the commissioner of the Iowa department of public safety or, as applicable, the commissioner's designee.

"Completed fingerprint card" means a standard fingerprint card with two sets (every finger and thumb) of fully rolled fingerprint impressions and all information required to check the Federal Bureau of Investigation (FBI) and Iowa division of criminal investigation (DCI) records for any disqualifying criminal conviction.

"Identification documentation for an Iowa resident" means any of the following:

1. A driver's license or nonoperator's identification card issued by the Iowa department of transportation; or
2. A nonresident motor vehicle license or nonoperator's identification card issued by a state other than Iowa and at least one current document indicating Iowa residency including a residential lease agreement, utility bill, voter registration, tuition receipt for a college or university in Iowa, or other documentation that is acceptable to the issuing officer and that indicates the intent of the person's presence in Iowa is something other than merely transitory in nature; or
3. A document which contains the name, place of residence, date of birth and photograph of the holder issued by or under the authority of the United States, a state or a political subdivision of a state and which is of a type intended or commonly accepted for the purpose of identification of individuals and at least one current document indicating Iowa residency including a residential lease agreement, utility bill, voter registration, tuition receipt for a college or university in Iowa, or other documentation that is acceptable to the issuing officer and that indicates the intent of the person's presence in Iowa is something other than merely transitory in nature; or
4. A nonresident motor vehicle license or nonoperator's identification card issued by a state other than Iowa and a document indicating that the person is a member of the United States armed forces on active duty and whose permanent duty station is located in Iowa; or
5. A driver's license or nonoperator's identification card issued by the Iowa department of transportation and an immigration document containing the alien registration number (ARN) of a permanent resident alien or nonimmigrant alien and documentation indicating that the person has continuously resided in the state for at least 90 days prior to making application. A nonimmigrant alien shall also be required to display a valid hunting license issued in any state.

"Identification documentation for a nonresident" means a nonresident motor vehicle license or nonoperator's identification card issued by a state other than Iowa.

"IOWA system" means the Iowa on-line warrants and articles criminal justice information system operated by the Iowa department of public safety for use by law enforcement and criminal justice agencies in the exchange of criminal history and other criminal justice information.

"NICS" means the National Instant Criminal Background Check System established by the Federal Bureau of Investigation for the purpose of determining whether the transfer of a firearm to any person or the issuance of a firearms related permit would be in violation of federal or state law. A NICS check shall include inquiries to the Iowa computerized criminal history database and the Iowa on-line warrants and articles (IOWA) system persons file.

"Qualify on a firing range" means to demonstrate proficiency with a handgun on a course of fire as part of an approved handgun training program.

"State employee" means a person whose need to go armed arises out of employment by the state of Iowa. "State employee" includes a railroad special agent as described in Iowa Code chapter 80.

661—91.2(724) Forms. The following forms, the use of which is required by provisions of this chapter, are provided by the commissioner and are available from the department of public safety or a sheriff:

1. Form WP0. For enrollment in a training program and for certification of the successful completion of the training program.
2. Form WP1. Professional permit to carry weapons.
3. Form WP2. Nonprofessional permit to carry weapons.
4. Form WP3. Application for annual permit to acquire pistols or revolvers.
5. Form WP4. Annual permit to acquire pistols or revolvers.
6. Form WP5. Application for permit to carry weapons.
7. Form WP6. Notification to a person holding a permit to carry weapons or an annual permit to acquire pistols or revolvers that the permit has been revoked.
8. Form WP7. Certified peace officer permit to carry weapons.
9. Form WP8. Wallet-size permit to carry weapons which includes, at a minimum, the name and date of birth of the permit holder, and the type of permit. A professional permit to carry weapons shall state the nature of employment requiring the holder to go armed. A nonprofessional permit to carry weapons shall state the reason for issuance and any restrictions or limitations of the authority granted by the permit.
10. Form WP10. Reserve peace officer permit to carry weapons.

661—91.3(724) Training programs.

91.3(1) The Iowa Code requires all applicants to successfully complete a training program designed to qualify persons in the safe use of firearms and requires that the commissioner approve all training programs.

91.3(2) The commissioner recognizes and accepts approved handgun training programs as defined in rule 661—91.1(724). Another program may be approved by the commissioner if it is substantially similar to or exceeds the requirements of an approved handgun training program.

661—91.4(724) Applicant procedures.

91.4(1) A resident of Iowa who wishes to obtain or renew a permit to carry weapons shall apply to the sheriff of the county of residence. The applicant shall:

a. Submit a fully and accurately completed application form;

b. Submit a certificate of completion of an approved handgun training program which includes qualifying on a firing range. This requirement may be waived on an application for renewal of a permit;

c. If so requested by the sheriff, submit two completed fingerprint cards;

d. Meet all the applicable requirements enumerated in Iowa Code chapter 724;

PUBLIC SAFETY DEPARTMENT[661](cont'd)

e. Comply with the applicable requirements of the United States Code, including 18 U.S.C. 921, et seq., also known as the Gun Control Act of 1968;

f. Pay the required fee; and

g. Display identification documentation for an Iowa resident as defined in rule 661—91.1(724). This requirement may be waived on an application for renewal of a permit.

91.4(2) The sheriff may use discretion in determining additional criteria for issuance of a permit pursuant to subrule 91.4(1). The sheriff may restrict or limit the authority granted by nonprofessional permits.

91.4(3) Prior to issuing a permit pursuant to subrule 91.4(1), the sheriff shall conduct a background investigation which includes, at a minimum, a NICS check run through the IOWA system.

91.4(4) A nonresident of Iowa, or a state employee who is required by employment to go armed, who wishes to obtain a permit to carry weapons shall apply to the commissioner. The applicant shall:

a. Submit a fully and accurately completed application form;

b. Submit a certificate of completion of an approved handgun training program which includes qualifying on a firing range. This requirement may be waived on an application for renewal;

c. Submit two completed fingerprint cards. This requirement may be waived on an application for renewal;

d. Meet all the applicable requirements enumerated in Iowa Code chapter 724;

e. Comply with the applicable requirements of the United States Code, including 18 U.S.C. 921, et seq., also known as the Gun Control Act of 1968;

f. Pay the required fee; and

g. Display, as applicable, identification documentation for an Iowa resident or identification documentation for a nonresident as defined in rule 661—91.1(724). This requirement may be waived on an application for renewal of a permit.

91.4(5) The commissioner may use discretion in determining additional criteria for issuance of a permit pursuant to subrule 91.4(4). The commissioner may restrict or limit the authority granted by nonprofessional permits.

91.4(6) Prior to issuing a permit pursuant to subrule 91.4(4), the commissioner shall conduct a background investigation which includes, at a minimum, a NICS check run through the IOWA system.

661—91.5(724) Firearm purchase or transfer.

91.5(1) The application for an annual permit to acquire pistols or revolvers shall be made to the sheriff of the county of the applicant's residence. The applicant shall:

a. Submit a fully and accurately completed application form;

b. If so requested by the sheriff, submit two completed fingerprint cards;

c. Meet all of the applicable requirements of Iowa Code chapter 724;

d. Comply with the applicable requirements of the United States Code, including 18 U.S.C. 921, et seq., also known as the Gun Control Act of 1968;

e. Display identification documentation for an Iowa resident as defined in rule 661—91.1(724).

91.5(2) Prior to issuing a permit pursuant to subrule 91.5(1), the sheriff shall conduct a background investigation which includes, at a minimum, a NICS check run through the IOWA system.

91.5(3) An annual permit to acquire pistols or revolvers shall be issued to the applicant immediately upon determination by the sheriff that the applicant complies with statutory requirements.

661—91.6(724) Reports and remittance to the state.

91.6(1) Each sheriff shall remit to the commissioner, by the seventh working day of the month which follows the month in which one or more permits to carry a weapon were issued, information about such permits, including the permit holder's name, date of birth, NICS transaction number, type of permit issued and the portion of the fee to be remitted to the department as required by the Iowa Code. The reporting of issued permits to carry weapons shall be on a form designated for that purpose.

91.6(2) Fees for each reporting period shall be remitted by the sheriff by a check made payable to: Iowa Department of Public Safety.

91.6(3) A copy of a revocation form of a permit to carry weapons shall be sent to the commissioner by the sheriff within seven working days from the date the permit holder received notification of the permit revocation.

661—91.7(724) Offensive weapons as collector's items—method of classification. An offensive weapon, other than a machine gun, shall be classified by the commissioner as a collector's item when the firearm is so defined in 27 CFR 478.11 as published April 1, 2006, in the Code of Federal Regulations.

These rules are intended to implement Iowa Code chapter 724.

ARC 5395B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 4, "Weapons," and to adopt new Chapter 95, "Disposition of Seized and Forfeited Weapons and Ammunition," Iowa Administrative Code.

Iowa Code chapter 809 governs the handling and disposition of property seized by law enforcement agencies, and Iowa Code chapter 809A establishes criteria and procedures for forfeiture of seized property. Generally, responsibility for administering seized and forfeited weapons is assigned to the Department of Public Safety.

The rules governing disposition of seized and forfeited weapons and ammunition are currently located in 661 Iowa Administrative Code Chapter 4, Division II. These rules are outdated and incomplete, in that they currently address only seized and forfeited firearms and ammunition, but not other seized and forfeited weapons. The rules proposed herein include updated provisions and provisions for weapons other than firearms. Also, the Department's rules generally are being renumbered to make the rules more accessible to members of the public and to persons subject to the provisions of

PUBLIC SAFETY DEPARTMENT[661](cont'd)

the rules. In coordination with that initiative, this proposed rule making rescinds Division II of Chapter 4 and adopts new Chapter 95.

A public hearing on these proposed amendments will be held on October 20, 2006, at 10:30 a.m. in the third floor conference room at the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515) 281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on October 20, 2006.

These amendments are intended to implement Iowa Code sections 809.21 and 809A.17.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind rules **661—4.51(809A)** through **661—4.59(809A)**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 95
DISPOSITION OF SEIZED AND FORFEITED WEAPONS AND AMMUNITION

661—95.1(809,809A) Definitions. The following definitions apply to rules 661—95.1(809,809A) to 661—95.11(809,809A):

"Ammunition reference file" means the physical collection of ammunition received, collected and maintained by the division of criminal investigation criminalistics laboratory for testing and evaluation purposes.

"Firearms inventory" means a listing of firearms received, collected, maintained, and disposed of by the division of criminal investigation criminalistics laboratory and of transactions regarding firearms completed by the laboratory. Firearms in the temporary custody of the laboratory for evidentiary examination are not included in the firearms inventory.

"Firearms reference file" means the physical collection of firearms received, collected and maintained by the division of criminal investigation criminalistics laboratory for comparison and identification purposes.

"Law enforcement purpose" means use by a peace officer in the execution of the officer's duties or use in training of peace officers or training offered by law enforcement agencies to peace officers or other persons.

661—95.2(809,809A) Ammunition and firearms. The division of criminal investigation criminalistics laboratory shall examine and evaluate all firearms and ammunition submitted to the laboratory pursuant to Iowa Code section 809A.17. All firearms submitted to the laboratory shall be evaluated and disposed of as provided in Iowa Code sections 809.21 and 809A.17 and these rules. Any ammunition submitted to the laboratory may be entered into the laboratory's ammunition reference file and may be utilized by the laboratory for testing and evaluation purposes.

661—95.3(809,809A) Firearms inventory. There is established a continuous firearms inventory in the division of criminal investigation criminalistics laboratory. All firearms transactions covered by any of the provisions noted herein, other than receipts and returns of weapons for evidentiary examination, shall be recorded as and made a part of the continuous firearms inventory. Each individual entry in the inventory shall be maintained for a period of no less than 20 years. Inventory entries which refer to firearms retained in the firearms reference file shall be maintained permanently.

661—95.4(809,809A) Deposit of firearms in the firearms reference file. There is established a division of criminal investigation criminalistics laboratory firearms reference file. Firearms submitted to the laboratory, other than firearms submitted solely for evidentiary examination, shall be evaluated as to their possible worth for testing and evaluation purposes. Any firearms deemed useful for such purposes shall be deposited in the firearms reference file.

661—95.5(809,809A) Disposition of firearms (interstate). Any firearm in the possession of the division of criminal investigation criminalistics laboratory pursuant to Iowa Code section 809A.17 which is not entered into the firearms reference file pursuant to the provisions of rule 661—95.4(809,809A) and which the commissioner of public safety deems appropriate for distribution to other crime laboratories may be offered to them. The transfer of a firearm shall be completed within one year of its evaluation.

661—95.6(809A) Transfer of rifles and shotguns to the department of natural resources. Any rifle or shotgun in the possession of the division of criminal investigation criminalistics laboratory pursuant to Iowa Code section 809A.17 which is not entered in the firearms reference file pursuant to rule 661—95.4(809,809A) or distributed to another crime laboratory pursuant to rule 661—95.5(809,809A) may be transferred to the Iowa department of natural resources for disposition pursuant to the rules of that department.

661—95.7(809,809A) Disposition of firearms (intrastate). Any firearm not entered in the firearms reference file pursuant to rule 661—95.4(809,809A) and still in the possession of the division of criminal investigation criminalistics laboratory pursuant to Iowa Code section 809A.17, subsequent to the procedures set out in rules 661—95.5(809,809A) and 661—95.6(809A), shall be evaluated for usefulness to Iowa law enforcement agencies. Any firearm which is deemed suitable for law enforcement purposes may be distributed to an Iowa law enforcement agency which has made a request for such firearm. This distribution shall be made in accordance with the reasonable needs of the requesting agency as determined by the commissioner of public safety. Any firearm received by a law enforcement agency pursuant to this rule is for the internal use of the receiving agency and may not be resold or otherwise distributed outside of the receiving agency, other than to be returned to the division of criminal investigation criminalistics laboratory.

661—95.8(809,809A) Final disposition and destruction of firearms. All firearms in the possession of the division of criminal investigation criminalistics laboratory pursuant to Iowa Code section 809A.17 which are not disposed of by the

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procedures provided in rules 661—95.2(809,809A) through 661—95.7(809,809A) shall be destroyed. Destruction shall be accomplished by grinding and chopping at a scrap metal facility or meltdown at a suitable foundry operation. All destruction shall be supervised and conducted by the staff of the division of criminal investigation criminalistics laboratory. Documentation of the destruction of the firearms shall be made in the firearms inventory.

661—95.9(809,809A) Claims. Any disputed claim of ownership or right of possession of a firearm or of ammunition subject to rules 661—95.1(809,809A) through 95.8(809, 809A) shall be adjudicated in accordance with the procedures regarding contested cases set forth in 661—Chapter 10.

661—95.10(809,809A) Disposition of explosives. Any law enforcement agency in possession of forfeited explosives shall contact the arson and explosives bureau of the fire marshal division for instructions and shall follow the instructions received from the fire marshal division for the disposition of the forfeited explosives.

661—95.11(809,809A) Disposition of weapons other than firearms and explosives. Any law enforcement agency in the possession of a forfeited weapon other than a firearm, ammunition, or explosives may contact the division of criminal investigation criminalistics laboratory for instructions for the disposition of the forfeited weapons.

These rules are intended to implement Iowa Code sections 809.21 and 809A.17.

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PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to rescind Chapter 19, "Missing Person Information Clearinghouse," and adopt a new Chapter 89, "Missing Persons," Iowa Administrative Code.

The Iowa Department of Public Safety has provided services related to the identification and location of missing persons since 1985, pursuant to Iowa Code chapter 694. In the intervening years, knowledge regarding effective means of locating missing persons has increased, as has the potential of applying new technologies. The commercialization of the Internet has provided substantial opportunities to disseminate information faster and to a wider audience than was possible historically. The amendments proposed herein update current rules of the Iowa Missing Person Information Clearinghouse to recognize technological changes which have been implemented in Iowa.

Beginning in 1997, after the abduction and murder of nine-year-old Amber Hagerman in Texas, a plan for rapid dissemination of information when a child has been abducted was developed and put into operation in all 50 states. The AMBER Alert Program is a voluntary alliance among law enforcement, broadcasters, and others with the ability to disseminate information rapidly to mobilize community resources to locate children who have been abducted and are believed to be in danger. The Iowa AMBER Alert Program became operational in March 2003. Proposed rules for the Iowa program are included in this Notice of Intended Action.

A public hearing on these proposed amendments will be held on October 20, 2006, at 9:30 a.m. in the third floor conference room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515) 281-5524; or by electronic mail to admrule@dps.state. ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on October 20, 2006.

These amendments are intended to implement Iowa Code chapter 694.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind and reserve **661—Chapter 19**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 89
MISSING PERSONS

661—89.1 through **661—89.99** Reserved.

DIVISION I
MISSING PERSON INFORMATION CLEARINGHOUSE

661—89.100(694) Missing person information clearinghouse. The missing person information clearinghouse is established in the division of criminal investigation. The clearinghouse provides a program for compiling, coordinating, and disseminating information, in order to locate missing persons through public awareness and cooperation, and to educate law enforcement officers and the general public about the issues related to missing persons.

661—89.101(694) Administration of missing person information clearinghouse. The division of criminal investigation administers the missing person information clearinghouse, and all questions, comments, or requests for, or submission of, information should be directed to the clearinghouse at the division of criminal investigation. Inquiries by mail should be addressed to: Missing Person Information Clearinghouse, Division of Criminal Investigation, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Inquiries by electronic mail should be addressed to mpicinfo@dps.state.ia.us.

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661—89.102(694) Definitions. The following definitions apply to rules 661—89.100(694) through 661—89.107(694).

"Approved" means having met the criteria set forth by the department of public safety.

"Clearinghouse" means the missing person information clearinghouse in the division of criminal investigation, Iowa department of public safety.

"Commissioner" means the commissioner of the Iowa department of public safety or the commissioner's authorized designee.

"Department" means the Iowa department of public safety.

"Missing person" means an individual having temporary or permanent residence in Iowa, or who is believed to be in Iowa, whose location has not been determined, who has been reported as missing to a law enforcement agency, and who:

1. Is physically or mentally disabled.
2. Is missing under circumstances indicating that the missing person may be in danger.
3. Is missing under circumstances indicating that the missing person's disappearance was not voluntary.
4. Is under the age of 21.

"Missing person report" means a report filed by a law enforcement agency or a private individual with the clearinghouse on a missing person report form.

"Missing person report form" means a form designated by the department of public safety for use by private citizens and law enforcement agencies to report missing person information to the missing person information clearinghouse. Law enforcement agencies may use forms other than the form designated by the department of public safety to submit missing person information to the clearinghouse, provided that all of the information requested on the designated form is provided.

"Prevention and education materials" means those materials that are designed to aid in the prevention of child abduction and to address risks of the exploitation of missing children and that are used in conjunction with a prevention and education program.

"Prevention and education programs" means those programs which have as their primary purpose the prevention of child abduction and of the exploitation of missing children.

"Programs and materials registry" or "registry" means a list of prevention and education materials and programs approved by the department.

661—89.103(694) Program information.

89.103(1) A toll-free telephone line (1-800-346-5507) is available 24 hours a day, seven days a week, to collect and disseminate information concerning missing persons in Iowa.

89.103(2) Current information on Iowa missing persons, including photographs when available, is available on the Web site of the clearinghouse.

89.103(3) After filing a complaint of a missing person with a law enforcement agency, the person filing the complaint may submit information to the clearinghouse on a missing person report form, which may be obtained from the clearinghouse or any law enforcement agency.

89.103(4) After a missing person complaint has been filed with a law enforcement agency, any person may submit information on a missing person report form to the clearinghouse.

661—89.104(694) Prevention and education programs and materials.

89.104(1) The clearinghouse shall maintain a registry of approved prevention and education programs and materials regarding missing and runaway children.

89.104(2) Any person or group wishing to submit prevention and education programs and materials for approval and inclusion in the registry may contact the clearinghouse in order to request information on submitting prevention and education programs and materials for approval.

89.104(3) The clearinghouse shall consider prevention and education programs and materials submitted for approval only upon receipt by the clearinghouse of all specified materials. The person or group submitting prevention and education programs or materials to the clearinghouse shall be notified of approval or rejection of the programs or materials on the registry. No prevention and education programs or materials shall be represented as having been approved by the clearinghouse or the department unless they have been approved and placed on the registry.

89.104(4) The following criteria shall govern approval of education and prevention materials and programs by the department:

a. A prevention or education program must contain all elements deemed necessary to adequately cover the subject matter.

b. Prevention and education programs and materials shall not contain any elements determined to be offensive or pornographic or which sensationalize the problem of missing persons.

c. Prevention and education programs and materials shall meet standards established by the department.

d. Prevention and education programs and materials which have been approved by the National Center for Missing and Exploited Children are deemed to be approved by the department.

89.104(5) Modifications to approved programs or materials shall be submitted to the clearinghouse for review and approval and shall not be represented as approved by the clearinghouse until such approval has been received.

89.104(6) Prevention or education programs or materials may be rejected for inclusion in the registry of approved prevention and education programs and materials if it is determined that materials utilized or content of the program is other than that which was submitted to the clearinghouse for approval, or if it is determined, based on current knowledge, that information provided in prevention and education programs and materials that have been approved previously is outdated or misleading.

89.104(7) Prevention or education programs or materials for which approval has been withdrawn by the clearinghouse shall be removed from the registry. The person or group that submitted the withdrawn program or material for consideration and approval shall be notified, if practicable.

89.104(8) If prevention or education programs or materials submitted to the clearinghouse are rejected for inclusion in the registry, or if the programs or materials previously approved are removed from the registry, the person or group that submitted the programs or materials to the clearinghouse may appeal the rejection or removal to the commissioner within 30 days of the date on which the clearinghouse notified the person or group of the rejection or withdrawal. A proceeding arising from this rule shall be a contested case and shall be subject to rules 661—10.301(17A) through 661—10.332(17A).

PUBLIC SAFETY DEPARTMENT[661](cont'd)

89.104(9) Any individual or group may contact the clearinghouse regarding prevention and education programs and materials to ascertain if a specific program or material is on the registry.

89.104(10) Any individual may file a complaint with the clearinghouse regarding prevention and education programs and materials on the registry. Complaints shall be directed to the clearinghouse in writing.

661—89.105(694) Release of information. Prevention and education materials and program information filed with the clearinghouse for review are open records. Information received by the department that pertains to a missing person, other than criminal investigative data, shall be open records unless deemed confidential pursuant to Iowa Code chapter 22, 692 or 694, or other provision of law.

661—89.106(694) Dissemination.

89.106(1) The clearinghouse shall distribute missing person information that contains the names, photographs, descriptions, and information related to the events surrounding the disappearance of missing persons through publication on the Missing Person Information Clearinghouse Web site. The law enforcement agency or person to contact if a missing person is located and the names of all located missing persons will be included in the information shown on the Web site.

NOTE: The Web site of the missing person information clearinghouse is http://www.iowaonline.state.ia.us/mpic/.

89.106(2) Each week the clearinghouse shall produce, update, and publish public service announcements on the clearinghouse Web site. A media outlet may request to receive the weekly public service announcement by electronic mail by subscribing to the electronic mail notification service available through the department Web site.

661—89.107(694) Training. The department shall develop training programs for law enforcement personnel and the general public.

89.107(1) Training for local law enforcement personnel shall include missing person reporting and legal procedures, tracking of missing persons, unidentified bodies, and criteria and procedures for AMBER alerts.

89.107(2) Training for the general public shall include information to assist in the prevention of child exploitation and kidnapping.

These rules are intended to implement Iowa Code section 694.10.

661—89.108 through **661—89.199** Reserved.

DIVISION II

AMBER ALERT PROGRAM

661—89.200(694) AMBER alert program. The AMBER alert program is a cooperative effort of the department of public safety, the department of transportation, the lottery authority, the Iowa association of broadcasters, the Iowa state association of sheriffs and deputies, local law enforcement agencies, and the national weather service.

661—89.201(694) Criteria. An AMBER alert shall be issued by Iowa state patrol communications upon receipt of a request from a law enforcement agency, provided that the following criteria for issuance of an AMBER alert are met:

1. Law enforcement has confirmed that a person has been abducted.
2. The person who has been abducted is under the age of 18.
3. Law enforcement believes the circumstances surrounding the abduction indicate that the child is in danger of serious bodily injury or death.
4. There is enough descriptive information about the child, abductor, or suspect's vehicle to believe that an immediate broadcast alert will help.

The criteria should be interpreted broadly so as to protect the safety of the abducted child and to maintain the integrity of the AMBER alert program and criteria.

661—89.202(694) Activation procedures.

89.202(1) An Iowa AMBER alert shall be issued by Iowa state patrol communications upon receipt of a request from a participating law enforcement agency, provided that the criteria established in rule 661—89.201(694) are met.

89.202(2) In order to initiate an Iowa AMBER alert, a law enforcement agency shall submit by facsimile transmission a completed copy of the "State of Iowa AMBER Alert Notification Plan Facsimile Transmission Packet" to the Des Moines station of Iowa state patrol communications. If transmission to the Des Moines station is not feasible, transmission may be made to the Cedar Rapids station of Iowa state patrol communications.

89.202(3) Upon receipt by Iowa state patrol communications of a completed facsimile transmission packet and if the AMBER alert criteria established in rule 661—89.201(694) are met, an AMBER alert shall be transmitted via the Emergency Alert System (EAS) to Iowa broadcasters.

89.202(4) After initiation of an AMBER alert, additional information may be submitted by the participating law enforcement agency by facsimile transmission, electronic mail, or telephone.

89.202(5) After initiation of an AMBER alert, available information shall be posted on the Iowa AMBER alert Web site.

NOTE: The Web site of the Iowa AMBER alert program is at www.iowaamberalert.org.

89.202(6) The communications officer of the Iowa state patrol may direct the issuance of an Iowa AMBER alert, upon receiving a request to do so from another state in which an AMBER alert has been issued, provided that there is evidence that the abductor may be traveling with the abducted child to or through Iowa.

89.202(7) An Iowa AMBER alert shall terminate if the child who was abducted is located or if five hours have elapsed since the initiation of the alert. An alert may be renewed.

89.202(8) If an Iowa AMBER alert is requested and if the circumstances indicate that a person is missing, the information shall be transmitted promptly to the Iowa missing person information clearinghouse.

661—89.203(694) Alternative alert if criteria are not satisfied. If an AMBER alert has been requested and the criteria established in rule 661—89.201(694) are not satisfied, the department may issue a missing person alert or a missing child alert.

These rules are intended to implement Iowa Code chapter 694.

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PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b.*"

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 300, "State Building Code—Administration," and Chapter 301, "State Building Code—General Provisions," Iowa Administrative Code, with the approval of the Building Code Advisory Council.

Iowa Code section 103A.7 authorizes and requires the Building Code Commissioner to adopt the State Building Code, and Iowa Code chapter 103A provides for the adoption of a State Building Code. Generally, the State Building Code has applied to construction of state-owned buildings and facilities and buildings and facilities in local jurisdictions which have adopted the State Building Code by local ordinance in accordance with procedures established in Iowa Code section 103A.12. The State Building Code has also applied to some other types of buildings and facilities, such as elder group homes and gaming facilities, in the absence of a local building code. In addition, certain provisions of the State Building Code apply statewide, including requirements for accessibility of buildings and facilities to persons with disabilities, if the buildings or facilities are available to the public; requirements for minimum plumbing facilities in places of public assembly, restaurants, pubs, and lounges; energy efficiency requirements; and requirements for factory-built structures, which include manufactured homes and modular buildings. Enforcement of the State Building Code by the Building Code Bureau has generally been limited to compliance reviews of construction plans.

2006 Iowa Acts, House File 2797, extends the applicability of the State Building Code to initial construction of buildings and facilities financed with moneys appropriated by the state, unless the construction is in a local jurisdiction which has a local building code in place and which enforces the local code through a system of plan reviews and inspections. 2006 Iowa Acts, House File 2797, also provides for on-site inspections of certain construction subject to the requirements of the State Building Code. Finally, 2006 Iowa Acts, Senate File 2272, provides that, in the absence of a local building code, school districts shall comply with the State Building Code in their construction projects if the district "uses local sales and services tax moneys for school infrastructure." According to the Iowa Department of Education, there are eight school districts in the state to which this provision does not apply.

A major revision and update of the State Building Code was completed last year and became effective April 1, 2006. Normally, significant revisions of the State Building Code will not occur every year, but are anticipated every three years because the national codes which are adopted by reference in the State Building Code are on a three-year revision cycle. However, in this case, two major considerations led to undertaking this revision at this time:

- The need to promptly address significant provisions regarding the applicability of the State Building Code which were adopted by the General Assembly in 2006.
- The issuance during 2006 of new editions of most of the codes adopted by reference in the State Building Code.

The amendments proposed herein update references to national codes adopted by reference, extend the scope of application of the State Building Code to construction projects covered by the language in new legislation, provide for inspections of certain projects subject to the State Building Code, and update the fee schedule for plan reviews undertaken by the Building Code Bureau.

A public hearing on these proposed amendments will be held on October 24, 2006, at 10 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309. Persons may present their views concerning these amendments at the public hearing orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 502 East 9th Street, Des Moines, Iowa 50319; or by telephone at (515)281-5524 at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on October 24, 2006. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code chapter 103A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend **661—Chapter 300** as follows:

CHAPTER 300
STATE BUILDING CODE—ADMINISTRATION

661—300.1(103A) State building code promulgated. Iowa Code section 103A.7 ~~gives~~ *assigns* to the building code commissioner~~, with the approval of the building code advisory council,~~ authority to promulgate the state building code, *with the approval of the building code advisory council,* except that adoption of the state historic building code requires the approval of the state historical society board of trustees, rather than the building code advisory council.

The state building code, as authorized by Iowa Code section 103A.7, includes 661—Chapters 16, 300, 301, 302, and 303. *The state historic building code is set forth in 661—Chapter 350.*

~~EXCEPTION: Prior to October 1, 2006, buildings or facilities subject to the state building code may be designed and constructed in compliance with 661—Chapter 16 as it existed on December 1, 2005. "Prior to October 1, 2006" means that required submissions have been made to the building code commissioner or a local building department by the close of business on September 30, 2006.~~

~~NOTE: Additional chapters will be promulgated and included in the state building code. All chapters of the state building code, other than 661—Chapter 16, will be numbered between 300 and 399. 661—Chapter 16 will be rescinded when all new chapters of the state building code have been adopted.~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—300.2(103A) Building code commissioner. No change.

661—300.3(103A) Building code advisory council. No change.

661—300.4(103A) Plan reviews.

300.4(1) Plans and specifications review. *Submittals of architectural technical documents, engineering documents, and plans and specifications to the building code commissioner are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional. "Responsible design professional" means a registered architect or licensed professional engineer who signs the documents submitted. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code and with sections 106.1 and 106.1.1 of the International Building Code, 2006 edition. In sections 106.1 and 106.1.1 of the International Building Code, 2006 edition, the word "permit" shall be replaced by "plan review." Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.*

Electronic submission of all construction documents is strongly encouraged. Any person planning to submit documents electronically shall contact the bureau for instructions.

a. Architectural technical submissions, engineering documents, or plans and specifications for *construction, renovation, or remodeling of* all state-owned buildings or facilities, *including additions to existing buildings,* shall be submitted to and approved by the commissioner before construction is begun. ~~Such submittals shall be filed by the owner or an authorized agent, agency or the responsible design architect or engineer. Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.~~

b. Architectural technical submissions, engineering documents, and plans and specifications for the initial construction of any building or facility which will not, when completed, be wholly owned by the state or an agency of the state shall be submitted to and approved by the commissioner before construction is begun, if the construction is financed in whole or in part with funds appropriated by the state and there is no local building code in effect in the local jurisdiction in which the construction is planned or, if there is such a local building code in effect, it is not enforced through a system which includes both plan reviews and inspections. This paragraph shall apply only to construction projects which have not received from the building or facility owner final written approval of design development documents prior to January 1, 2007.

~~b~~ *c*. Architectural technical submissions, engineering documents, or plans and specifications for *construction, renovation, or remodeling of* all buildings or facilities, *including additions to existing buildings,* to which the state building code applies, other than ~~state-owned buildings or facilities,~~ *those subject to paragraph "a" or "b,"* shall be submitted to and approved by the commissioner before construction is begun, unless applicability of the state building code is based upon a local ordinance enacted pursuant to Iowa Code section 103A.12. ~~Such submittals shall be filed by the owner or an authorized agent or agency or the responsible design architect or engineer. Submittals shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.~~

d. If ~~applicability of~~ the state building code ~~is~~ *applies to a construction project* based upon a local ordinance adopting the state building code, the submission shall be made to the local jurisdiction, provided that the local jurisdiction has established a building department, unless the local jurisdiction requires submission to the building code commissioner. Review and approval of such documents by the building code commissioner shall be at the discretion of the building code commissioner based upon resources available.

~~NOTE: Preliminary or intermediate documents may be submitted for general discussion concerning compliance with the appropriate regulations if the documents are labeled "preliminary" or "not for construction" or are labeled with similar wording indicating that the documents are not being submitted for final approval. Such preliminary documents shall not exhibit the seal and signature.~~

300.4(2) ~~Minimum review requirements. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code and with sections 106.1 and 106.1.1 of the International Building Code, 2003 edition. In sections 106.1 and 106.1.1 of the International Building Code, 2003 edition, the word "permit" shall be replaced by "plan review."~~

~~300.4(3)~~ Copies and fees. See 661—Chapters 16, 302, and 303 for fees pertaining to factory-built structures~~, accessibility reviews, and energy conservation reviews~~.

a. No change.

b. The fees for plan reviews completed by the building code bureau shall be calculated as follows:

	~~Preliminary Plan Review Meeting (Optional)~~	~~Plan Review Fee~~	~~Plan Review Fee Including Optional Preliminary Plan Review Meeting~~
~~AREA IN SQUARE FEET~~	~~Cost~~	~~Cost~~	~~Cost~~
~~Up to 5,000~~	~~$75~~	~~$200~~	~~$275~~
~~5,001-10,000~~	~~$100~~	~~$300~~	~~$400~~
~~10,001-20,000~~	~~$125~~	~~$400~~	~~$525~~
~~20,001-50,000~~	~~$150~~	~~$500~~	~~$650~~

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	~~Preliminary Plan Review Meeting (Optional)~~	~~Plan Review Fee~~	~~Plan Review Fee Including Optional Preliminary Plan Review Meeting~~
~~50,001-100,000~~	~~$200~~	~~$600~~	~~$800~~
~~100,001-150,000~~	~~$200~~	~~$1,000~~	~~$1,200~~
~~150,001-200,000~~	~~$200~~	~~$1,200~~	~~$1,400~~
~~200,001-250,000~~	~~$200~~	~~$1,400~~	~~$1,600~~
~~250,001-300,000~~	~~$250~~	~~$1,600~~	~~$1,850~~
~~300,001-350,000~~	~~$250~~	~~$1,800~~	~~$2,050~~
~~350,001-400,000~~	~~$250~~	~~$2,000~~	~~$2,250~~
~~400,001-450,000~~	~~$300~~	~~$2,200~~	~~$2,500~~
~~More than 450,000~~	~~$300~~	~~$2,400~~	~~$2,700~~
~~Special Limited Reviews~~			~~Fee~~
~~Sprinkler Plan Review~~			~~$100~~
~~Fire Alarm Review~~			~~$100~~
~~Accessibility Review~~			~~$30~~

Estimated Construction Costs	***Calculation of Plan Review Fee***
Up to and including $1 million	*$.58 per thousand dollars or fraction thereof (minimum fee $200)*
Greater than $1 million	*$640 for the first $1 million plus $.32 for each additional thousand dollars or fraction thereof*
The plan review fees for fire suppression systems and fire alarm systems are separate fees and shall be calculated as follows:	
Fire Protection System Costs	***Plan Review Fee***
Fire suppression systems whose construction cost for installation is calculated to be up to and including $20,000	*$200*
Fire suppression systems whose construction cost is estimated to be greater than $20,000	*$400*
Fire alarm systems whose construction cost for installation is calculated to be up to and including $20,000	*$200*
Fire alarm systems whose construction cost is estimated to be greater than $20,000	*$400*

Payment of the assigned fee shall accompany each plan when submitted for review. Payment may be made by money order, check or draft made payable to the Iowa Department of Public Safety—Building Code Bureau.

c. No change.

300.4(3) *Preliminary meeting. The responsible design professional for a project is strongly encouraged to schedule a preliminary meeting to discuss code compliance issues early in the design development phase. The responsible design professional should contact the bureau to schedule the preliminary meeting. There is no separate fee for a preliminary meeting.*

661—300.5(103A) Inspections.

300.5(1) *After January 1, 2007, any building or facility for which construction is subject to a plan review by the commissioner, except construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents, shall be inspected by the commissioner or staff of the bureau or division at the direction of the commissioner or by a third party with whom the commissioner contracts to conduct inspections of buildings and facilities subject to the state building code. Fees for inspections completed by a third party under contract with the building code commissioner shall be paid by the owner of the building or facility directly to the third-party contractor and shall be in an amount specified in the contract. Inspection fees established in a contract with a third party may vary according to the valuation or complexity of the project, or the amount of time required to complete and report upon any required inspections, or the number of inspections required before compliance with the provisions of the state building code is achieved, but shall not vary according to the geographical location within the state of Iowa of the building or facility or according to the travel time required of an inspector.*

300.5(2) *After July 1, 2007, any construction involving any building or facility owned by the board of regents or by an institution subject to the authority of the board of regents shall be inspected by the commissioner or staff of the bureau or division at the direction of the commissioner.*

300.5(3) *The fee schedule established in a contract or contracts for inspections conducted by a third party shall apply to inspections conducted by the commissioner or staff of the bureau or division at the direction of the commissioner. However, if inspections are conducted by the commissioner, or by staff of the bureau or division at the direction of the commissioner, the fees shall be paid by the owner directly to the bureau.*

~~661—300.5(103A)~~ ***661—300.6(103A)*** **Local code enforcement.** Provisions of the state building code applicable statewide or applicable in a local jurisdiction which has adopted the state building code by local ordinance may be enforced by the local jurisdiction.

~~300.5(1)~~ ***300.6(1)*** Creation of department. There may be established within the governmental subdivision a "building department" which shall be under the jurisdiction of the building official designated by the appointing authority. Within the state building code, including publications adopted by reference within the state building code, the terms

"administrative authority," "authority having jurisdiction," and "authorized representative" shall mean the building official.

~~300.5(2)~~ *300.6(2)* Powers and duties of building official. The building official in those governmental subdivisions establishing a building department shall enforce all the provisions of ~~this~~ *any applicable building* code as prescribed by local law or ordinance and as outlined by Iowa Code section 103A.19.

~~300.5(3)~~ *300.6(3)* Permits only. Any governmental subdivision that has not established a building department but requires a permit to construct or *an* occupancy permit or both shall be known as the "issuing authority."

These rules are intended to implement Iowa Code chapter 103A.

ITEM 2. Amend rule 661—301.1(103A) as follows:

661—301.1(103A) Scope and applicability. The provisions of this chapter apply generally to*:*

1. ~~buildings~~ *Buildings* and facilities owned by the state of Iowa*;*

2. The initial construction of any building or facility not wholly owned by the state of Iowa or any department or agency of the state of Iowa which is financed in whole or in part with funds appropriated by the state, if there is no local building code in effect in the jurisdiction in which the construction is located or if there is a local building code in effect in the jurisdiction, and the local building code is not enforced through a system of plan reviews and inspections;

3. Buildings and facilities subject to the state building code, pursuant to a provision of state or federal law other than Iowa code chapter 103A; and

4. ~~to buildings~~ *Buildings* and facilities in local jurisdictions which have adopted the state building code by local ordinance in accordance with the provisions of Iowa Code section 103A.12.

ITEM 3. Amend rule **661—301.2(103A)** as follows:

Add the following **new** definitions in alphabetical order:

"Appropriated by the state of Iowa" means funds which are included in a bill enacted by the Iowa general assembly and signed by the governor or which are appropriated in a provision of the Iowa Code.

"Bureau" means the building code bureau of the fire marshal division of the department of public safety.

"Construction cost" means the total cost of the work to the owner of all elements of the project designed or specified by the design professional including the cost at current market rates of labor and materials furnished by the owner and equipment designed, specified or specially provided by the design professional. Construction costs shall include the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for each construction manager's or contractor's overhead and profit.

"Division" means the fire marshal division of the department of public safety.

"State plumbing code" means the state plumbing code adopted by the Iowa department of public health, pursuant to Iowa Code section 135.11, subsection 5.

NOTE: As of [insert effective date of this rule], the state plumbing code is found in 641—Chapter 25.

Amend the definition of "structure" as follows:

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner except transmission and distribution equipment of public utilities. ~~The word "structure"~~ *"Structure"* includes any part of a structure unless the context clearly requires a different meaning.

ITEM 4. Amend rule 661—301.3(103A) as follows:

661—301.3(103A) General provisions. The provisions of the International Building Code, ~~2003~~ *2006* edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the general requirements for building construction, with the following amendments:

Delete sections 101 through 115 except for sections 106.1, ~~and~~ 106.1.1, *and 106.1.1.1*.

Add the following new section 1100:

Any building or facility which is in compliance with the applicable requirements of 661—Chapter 302 shall be deemed to be in compliance with any applicable requirements contained in the International Building Code concerning accessibility for persons with disabilities.

Delete chapter 29.

Amend section 3401.3 by deleting "International Private Sewage Disposal Code" and inserting in lieu thereof "567 Iowa Administrative Code Chapter 69."

Delete appendices A through ~~J~~ *K*.

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, 2005 edition."

EXCEPTION: Prior to April 1, 2007, buildings or facilities subject to the state building code may be designed and constructed in compliance with the state building code as it read prior to [insert effective date of this rule]. "Prior to April 1, 2007" means that required submissions have been made to the building code commissioner or a local building department by the close of business on March 31, 2007.

301.3(1) and **301.3(2)** No change.

ITEM 5. Amend rule 661—301.4(103A), introductory paragraph, as follows:

661—301.4(103A) Mechanical requirements. The provisions of the International Mechanical Code, ~~2003~~ *2006* edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related proc-esses within buildings, with the following amendments:

ITEM 6. Amend subrule 301.6(1) as follows:

301.6(1) Plumbing installations which are not subject to the state plumbing code, 641—Chapter 25, and which are in buildings or facilities subject to the state building code ~~may~~ *shall* comply either with the state plumbing code or with the International Plumbing Code, ~~2003~~ *2006* edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, except that any assembly occupancy, restaurant, pub or lounge constructed on or after January 1, 1991, shall comply with the provisions of subrule 301.6(2) regarding the provision of minimum plumbing facilities.

ITEM 7. Amend rule 661—301.7(103A) as follows:

661—301.7(103A) Existing buildings.

301.7(1) Definition. "Existing building" means a building erected prior to ~~April 1, 2006~~ *[insert effective date of this rule]*, or for which plans have received approval from the

PUBLIC SAFETY DEPARTMENT[661](cont'd)

building code bureau of the fire marshal division of the department of public safety prior to ~~April 1, 2006~~ *[insert effective date of this rule]*.

301.7(2) Adoption. The provisions of the International Existing Building Code, ~~2003~~ *2006* edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for repair, alteration, change of occupancy, addition, and relocation of existing buildings, with the following amendments:

Delete chapter 1.

Delete section 605.

Delete section 806.

Delete section 912.8.

Delete ~~appendix A,~~ chapters A1 through A5~~, and~~ .

Adopt appendix B*, with the following amendments:*

Delete section 101 and insert in lieu thereof the following new section:

Any building or facility subject to this rule shall comply with the provisions of 661—Chapter 302.

Delete sections 102, B103, and B104.

Delete resource A.

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, 2005 edition."

ITEM 8. Amend rule 661—301.8(103A) as follows:

661—301.8(103A) Residential construction requirements. The provisions of the International Residential Code, ~~2003~~ *2006* edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

Delete chapters 1 and 11.

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Amend section ~~R323.1.6~~ *R324.1.6* by striking the words "Chapter 3 of the International Private Sewage Disposal Code" and inserting in lieu thereof "567 Iowa Administrative Code Chapter 69."

Add the following new sections:

P2500. Chapter 25 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P2600. Chapter 26 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P2700. Chapter 27 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P2800. Chapter 28 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P2900. Chapter 29 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P3000. Chapter 30 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P3100. Chapter 31 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P3200. Chapter 32 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

~~EXCEPTION: A structure which is subject to this rule and which is an "existing building" as defined in subrule 301.7(1) shall be deemed to be in compliance with this rule if the structure meets the applicable provisions of the International Existing Building Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.~~

ARC 5402B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103A.41, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 350, "State Historic Building Code," Iowa Administrative Code, with the approval of the State Historical Society Board of Trustees.

Iowa Code section 103A.41 authorizes and requires the Building Code Commissioner, with the approval of the State Historical Society Board of Trustees, to adopt the State Historic Building Code. The State Historic Building Code provides an "alternative" building code for qualified historical buildings, which meet the requirements for inclusion in the National Register of Historic Places.

This Notice proposes the updating of references to the International Existing Building Code, 2006 edition. The 2003 edition of the International Existing Building Code was adopted as the basis of the State Historic Building Code last year, and became effective on January 1, 2006. A separate Notice of Intended Action (see **ARC 5404B** herein) proposes the updating of references to codes adopted by reference in the State Building Code. The amendments proposed herein coordinate with the proposed updating of the State Building Code.

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A public hearing on this proposed amendment will be held on October 26, 2006, at 10:30 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309. Persons may present their views concerning this amendment at the public hearing orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 502 East 9th Street, Des Moines, Iowa 50319; or by telephone at (515)281-5524 at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning this proposed amendment to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on October 26, 2006. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on October 26, 2006.

This amendment is intended to implement Iowa Code sections 103A.41 through 103A.45.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 661—350.1(103A) as follows:

661—350.1(103A) Scope and definition.

350.1(1) Scope. This chapter applies to buildings which meet the requirements for placement on the National Register of Historic Places. This chapter is an alternative to the state building code or local building codes for the buildings to which it applies.

"Historic building" means any building or structure that is listed in the state or National Register of Historic Places; that is designated as a historic property under local or state designation law or survey; that is certified as a contributing resource within a National Register-listed or locally designated historic district; or that has an opinion or certification that the property is eligible to be listed on the state or National Register of Historic Places either individually or as a contributing building to a historic district by the state historic preservation officer pursuant to Iowa Code section 103A.42 or the Keeper of the National Register of Historic Places.

350.1(2) Administration. The provisions of ~~rules 661—300.2(103A), 300.4(103A), and 300.5(103A)~~ *661—Chapter 300* are adopted by reference.

350.1(3) Adoption. The provisions of the International Existing Building Code, ~~2003~~ *2006* edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted as the alternative requirements for rehabilitation, preservation, restoration, and relocation of historic buildings, with the following amendments:

Delete chapter 1.

Delete the definition of "historic building."

Delete section 503.3.1.

Delete appendix A, chapters A1 through A5, and appendix B.

Delete resource A.

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, 2005 edition."

NOTE 1: International Existing Building Code, ~~2003~~ *2006* edition, Resource A, provides guidelines for evaluating fire ratings of archaic materials and assemblies which may be used by designers and code officials when evaluating compliance with provisions of this chapter.

NOTE 2: Except for elevators excluded from jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89A.2, each elevator is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

NOTE 3: Except for boilers and pressure vessels excluded from the jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89A.4, each boiler or pressure vessel is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

Any boiler which is subject to requirements established by the Iowa department of natural resources is required to comply with any such requirements and is subject to enforcement of any applicable regulations by the Iowa department of natural resources.

This rule is intended to implement Iowa Code sections 103A.41 through 103A.45.

ARC 5403B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2006 Iowa Acts, Senate File 2394, section 6, the Building Code Commissioner hereby gives Notice of Intended Action to adopt a new Chapter 372, "Manufactured or Mobile Home Retailers, Manufacturers, and Distributors," Iowa Administrative Code.

2006 Iowa Acts, Senate File 2394, transferred responsibility for licensing of manufactured housing retailers, manufacturers, and distributors from the Department of Transportation to the Department of Public Safety, effective January 1, 2007. The rules proposed herein would establish procedures and requirements for the licensing program under the direction of the Building Code Commissioner, as provided in the statute. Generally, the proposed rules provide continuity with the previous administration of the licensing program by the Department of Transportation, although there are several significant changes. The licensure fee has been raised from $35 to $100 annually, as provided in the statute. The proposed rules contain formal provisions for disciplinary action, including civil penalties, also as provided in the statute. Also included in the proposed rules is a requirement that each business location of a retailer be licensed separately.

A public hearing on these proposed rules will be held on October 26, 2006, at 10 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309. Persons may present their views concerning these rules at the public hearing orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department

PUBLIC SAFETY DEPARTMENT[661](cont'd)

of Public Safety, 502 East 9th Street, Des Moines, Iowa 50319; or by telephone at (515)281-5524 at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning these proposed rules to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on October 26, 2006. Comments may also be submitted by electronic mail to admrule@ dps.state.ia.us at least one day prior to the public hearing.

These rules are intended to implement Iowa Code chapter 103A as amended by 2006 Iowa Acts, Senate File 2394.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt the following **new** chapter:

CHAPTER 372
MANUFACTURED OR MOBILE HOME RETAILERS, MANUFACTURERS, AND DISTRIBUTORS

661—372.1(103A) Definitions. The definitions in 2006 Iowa Acts, Senate File 2394, section 1, are made part of this chapter. In addition, the following words and phrases when used in this chapter shall have these meanings respectively ascribed to them, except when the context otherwise requires.

"Bureau" means the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

"Certificate of title" means a document issued by the appropriate official which contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all security interests and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms "title certificate," "title only," and "title" are synonymous with the term "certificate of title."

"Commissioner" means the building code commissioner.

"Department" means the Iowa department of public safety.

"Manufacturer's certificate of origin" means a certification signed by the manufacturer or importer that the manufactured or mobile home described has been transferred to the person or retailer named and that the transfer is the first transfer of the manufactured or mobile home in ordinary trade and commerce. The description shall include the make, model year, vehicle identification number, and other information which may be required by statute or rule. The terms "manufacturer's statement," "importer's statement or certificate," "MSO" and "MCO" are synonymous with the term "manufacturer's certificate of origin."

"Model year" means the year of original manufacture or the year certified by the manufacturer.

661—372.2(103A) Criteria for obtaining a manufactured or mobile home retailer's license.

372.2(1) Licensing information. Information concerning license requirements may be obtained from the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

372.2(2) Application. A manufactured or mobile home retailer shall file a completed application form at least 30 days prior to the expiration of a current license or, if the application is for an initial license, 30 days prior to the date on which the retailer anticipates doing business. A retailer may not operate without a current license.

372.2(3) Expiration. Each license expires on January 1 of the calendar year following the year in which the license is issued, except that a license issued in December of any year shall cover the following calendar year.

372.2(4) Fees. The license fee established by statute is $100 annually or for any portion of a year, except that a license issued in December of any year is valid for the following calendar year and any retailer with a license valid for a particular calendar year may continue to operate under that license until the end of January of the following calendar year.

372.2(5) Surety bond. The applicant shall obtain a surety bond in the amount of $50,000. The original bond shall be filed with the department. The bond shall provide for a 30-day notice to the bureau, prior to cancellation. The bureau shall notify the bonding company of any violations of Iowa Code chapter 103A or these rules by the license holder. The bureau shall notify the retailer by mail or personal service that the retailer's license shall be revoked the same date the bond is canceled unless the bond is reinstated or a new bond is filed.

372.2(6) Place of business. The applicant shall maintain a place of business at a designated location. A manufactured or mobile home may be used as an office if the home's taxes are current. The place of business shall include telephone service and an office area in which are kept the business records, manufacturer's certificates of origin, certificates of title or other evidence of ownership of each manufactured or mobile home offered for sale.

372.2(7) Separate place of business. A separate retailer's license shall be obtained for each separate location in which the applicant maintains a place of business.

661—372.3(103A) Operation under distinct name. A manufactured or mobile home retailer shall not represent or advertise the business under any name other than the name that appears on the retailer's license.

661—372.4(103A) Supplemental statements. A manufactured or mobile home retailer shall file with the commissioner a written statement upon change of name or change of location of the retailer's place of business. The written statement shall be filed within ten days of the change with a fee of $100 in payment of a new license reflecting the change.

661—372.5(103A) Denial, suspension, or revocation—civil penalties.

372.5(1) The commissioner may deny the issuance or renewal of a license if the applicant has committed any violation of any provision of law applicable to the operation of a business required to be licensed pursuant to this chapter.

372.5(2) The commissioner may suspend or revoke a license for any violation of this chapter or of any other provision of law applicable to the operation of a business required to be licensed pursuant to this chapter.

372.5(3) The commissioner may impose a civil penalty for any violation of this chapter or of Iowa Code chapter 103A. A civil penalty may be imposed in addition to a denial of the issuance or renewal of a license, a suspension of a license, or a revocation of a license. A civil penalty shall not be imposed in lieu of a denial of the issuance or renewal of a license or of a revocation of a license. A civil penalty shall not exceed $1,000 for each offense. Each violation involving a separate manufactured or mobile home, or a separate fail-

ure or refusal to allow an act to be performed or to perform an act as required by this chapter or Iowa Code chapter 103A, constitutes a separate offense. However, the maximum amount of civil penalties which may be assessed for any series of violations occurring within one year from the date of the first violation shall not exceed $1 million.

661—372.6(103A,321) Sale or transfer of manufactured or mobile homes. The following criteria apply to the sale or transfer of manufactured or mobile homes.

372.6(1) Retailer sales.

a. A manufactured or mobile home owned by a retailer shall not be offered for sale unless the retailer has a properly assigned manufacturer's certificate of origin or a certificate of title, a seal from the United States Department of Housing and Urban Development properly attached, a data plate attached by the manufacturer, and a manufacturer's installation manual for the home. A retailer shall not sell a manufactured or mobile home owned by the retailer without delivering to the transferee a manufacturer's certificate of origin or a certificate of title duly assigned to the transferee.

b. A used manufactured or mobile home with an Iowa title assigned to the retailer shall not be reassigned by the retailer. After acquiring the used home, the retailer shall obtain a new certificate of title as required by law.

372.6(2) Transfers. A manufactured or mobile home not owned by a retailer may be offered for sale and sold by a retailer under the following conditions:

a. The manufactured or mobile home owner and retailer shall enter into a written listing agreement, signed by the owner or by one owner of a manufactured or mobile home owned jointly by more than one person, and signed by the retailer, which shall be dated and include the following provisions:

(1) The make, model year, and vehicle identification number.

(2) The period of time that the agreement shall remain in force.

(3) The commission or other remuneration that the retailer is entitled to receive.

(4) The price for which the manufactured or mobile home shall be sold.

(5) The name and address of the secured party, if the manufactured or mobile home is subject to a security interest.

(6) Any additional terms to which the owner(s) and retailer agree.

b. If current taxes have not been paid, the taxes and penalties shall be paid from the proceeds of the sale.

c. The retailer shall inform a prospective purchaser of a manufactured or mobile home that the home is not owned by the retailer and, if requested by a prospective purchaser, provide the name and address of the owner(s).

d. An offer to purchase a manufactured or mobile home shall be in writing.

e. The retailer shall make a written disclosure to the purchaser of the description of the manufactured or mobile home; the name and address of the owner; if the home is subject to a security interest, the name and address of the secured party; and, if the current taxes have not been paid, the amount of taxes and penalties due. The disclosure statement shall be signed and dated by the transferee. The disclosure statement shall be in duplicate. The original shall be given to the transferee and the duplicate retained by the retailer, at the retailer's principal place of business, for a period of three years.

f. The documents required pursuant to this subrule shall be made available to the commissioner or any designee of the commissioner for inspection upon request.

661—372.7(103A) Right of inspection. The commissioner or any designee of the commissioner shall have the authority to inspect manufactured or mobile homes, business records, manufacturer's certificates of origin, certificates of title or other evidence of ownership of each manufactured or mobile home offered for sale.

661—372.8(103A) Criteria for obtaining a manufactured or mobile home manufacturer's or distributor's license. Information concerning license requirements may be obtained from the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

372.8(1) Application. A manufactured or mobile home manufacturer or distributor shall file a completed application form at least 30 days prior to the expiration of a current license, or if the application is for an initial license, 30 days prior to the date on which the manufacturer or distributor anticipates doing business. A manufacturer or distributor may not operate without a current license.

372.8(2) Expiration. Each license expires on January 1 of the calendar year following the year in which it is issued, except that a license issued in December of any year shall cover the following calendar year.

372.8(3) Fees. The license fee established by statute is $100 annually or for any portion of a year, except that a license issued in December of any year is valid for the following calendar year and any manufacturer or distributor with a license valid for a particular calendar year may continue to operate under that license until the end of January of the following calendar year.

372.8(4) Notification. Manufactured or mobile home manufacturers and distributors shall, within ten days of the fact, notify the bureau in writing of:

a. Any change in the name, method of doing business or the location of the place of business as shown on the license and shall include a fee of $100 in payment of a new license reflecting the change.

b. Issuance of a franchise or contract with a person in this state to sell new manufactured or mobile homes at retail.

c. Any change in the trade names of manufactured or mobile homes being manufactured for delivery in this state.

372.8(5) Required acts. Manufactured or mobile home manufacturers and distributors shall furnish sample manufacturer's certificates of origin to the commissioner for each make of manufactured or mobile home assembled by the manufacturer for delivery in this state.

These rules are intended to implement Iowa Code chapter 103A as amended by 2006 Iowa Acts, Senate File 2394.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for September is 7.00%.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants . . . . . Maximum 6.0%
74A.4 Special Assessments . . . . . Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective September 12, 2006, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days . . . . . Minimum 2.00%
32-89 days . . . . . Minimum 2.95%
90-179 days . . . . . Minimum 3.25%
180-364 days . . . . . Minimum 3.60%
One year to 397 days . . . . . Minimum 3.80%
More than 397 days . . . . . Minimum 4.75%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 5400B

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code section 17A.4 and Iowa Code chapters 476B and 476C, the Utilities Board (Board) gives notice that on September 8, 2006, the Board issued an order in Docket No. RMU-06-7, In re: Wind and Renewable Energy Tax Credits, "Order Commencing Rule Making." The Board is noticing for public comment proposed amendments to 199 IAC 15.18(476B) and 15.19(476C) and proposed new rules 199 IAC 15.20(476B) and 15.21(476C).

Iowa Code chapters 476B and 476C assign the Board two specific roles in implementing tax credits for energy produced by large wind facilities (chapter 476B) and by smaller wind and renewable energy facilities (chapter 476C). On January 26, 2006, the Board issued an order adopting rules addressing its first role, processing applications for facility eligibility. The proposed amendments to 199 IAC 15.18(476B) and 15.19(476C) are designed to implement statutory changes to Iowa Code chapters 476B and 476C enacted in 2006 Iowa Acts, Senate File 2399.

The two proposed new rules, 199 IAC 15.20(476B) and 15.21(476C), address the Board's second role, accepting and reviewing the tax credit applications and forwarding the applications to the Department of Revenue. Under Iowa Code chapters 476B and 476C, the Department of Revenue is responsible for processing the tax credit applications and issuing tax credit certificates.

- Aside from minor wording changes, the proposed changes to 199 IAC 15.18(476B) are as follows:

The amendment to 15.18(1)"c"(4) extends the maximum eligible in-service date from January 1, 2008, to January 1, 2009, in accordance with the statutory change in Iowa Code chapter 476B.

The amendment to 15.18(1)"d" allows an executed interconnection agreement or transmission service agreement, in lieu of a power purchase agreement, in accordance with the statutory change in Iowa Code chapter 476B.

The amendment to 15.18(4) allows applicants to apply for a 12-month extension of their 18-month facility in-service requirement, due to "unavailability of necessary equipment," in accordance with the statutory change in Iowa Code chapter 476B.

Subrule 15.18(6) formalizes the "waiting list" or queue currently used by the Board to prioritize chapter 476B eligibility applications and adds an annual reporting requirement for applicants regarding the status of their applications to parallel the new statutory requirements under Iowa Code chapter 476C (see 15.19(6) below).

- Aside from minor wording changes, the proposed changes to 199 IAC 15.19(476C) are as follows:

The amendment to 15.19(1)"c" moves the statutory two-facility ownership limit from paragraph 15.19(1)"b" and clarifies legislative intent to limit ownership in terms of ownership interest rather than sole ownership. If the two-facility ownership limit were based only on sole ownership, the new statutory limits reflected in paragraphs 15.19(1)"d" and 15.19(1)"e" below would render the statutory two-facility limit meaningless.

The amendments to 15.19(1)"d" and 15.19(1)"e" implement the new statutory ownership limitation under Iowa Code chapter 476C − that any owner holding a 51 percent or greater equity interest in a facility cannot own an equity interest greater than 10 percent in any other eligible facility.

The amendment to 15.19(1)"f"(1) adds "refuse conversion facility" to the list of eligible facility types, in accordance with the statutory change in Iowa Code chapter 476C.

The amendment to 15.19(1)"f"(4) extends the maximum eligible in-service date from January 1, 2011, to January 1, 2012, in accordance with the statutory change in Iowa Code chapter 476C.

The amendment to 15.19(4) extends the facility in-service requirement from 18 months to 30 months, in accordance with the statutory change in Iowa Code chapter 476C.

The amendment to 15.19(5) by reference, reflects the statutory addition of "energy production capacity equivalents" to the maximum total capacity limits eligible for tax credits under Iowa Code chapter 476C.

Subrule 15.19(6) formalizes the "waiting list" or queue currently used by the Board to prioritize chapter 476C eligibility applications and adds an annual reporting requirement

for applicants regarding the status of their applications, in accordance with statutory changes in Iowa Code chapter 476C.

Proposed new rules 199 IAC 15.20(476B) and 15.21(476C) are based primarily on the tax credit application rules adopted by the Department of Revenue for chapter 476B tax credits (i.e., 701 IAC 42.25(422,476B), 52.26(422,476B), and 58.15(422,476B)) and chapter 476C tax credits (i.e., 701 IAC 42.26(422,476C), 52.27(422, 476C), and 58.16(422,476C)), plus additional statutory considerations recently adopted in Iowa Code sections 476B.6(5) and 476C.4(4). The proposed rules have been reviewed by representatives of the Department of Revenue and reflect their comments and suggestions.

Proposed rule 15.20(476B) describes the requirements and procedures for chapter 476B tax credit applications, and rule 15.21(476C) describes the same information for chapter 476C applications. The two rules are parallel in structure. The first subrule describes the application filing requirements, plus Board procedures for forwarding the applications to the Department of Revenue with accompanying Board analysis and opinion. The second subrule describes the Department of Revenue's process for reviewing the applications and issuing the tax credit certificates.

The proposed rules specify the format of the application without reference to a preprinted form. The rules depart from standard Board filing requirements by requiring an original and two copies of the tax credit applications, rather than ten copies. The proposed rules provide that the applications are confidential pursuant to 199 IAC 1.9(5)"c."

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before October 17, 2006, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed new rules and amendments will be held at 10 a.m. on November 7, 2006, in the Board's hearing room at the address listed above. The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA, HF2206) is applicable to this rule.

These amendments are intended to implement Iowa Code chapters 476B and 476C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 15.18(1) as follows:

15.18(1) Filing requirements. Any person applying for certification of eligibility for wind energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner, and a statement *attesting* that owners meeting the eligibility requirements of Iowa Code Supplement section 476B.5 are not owners of more than two eligible renewable energy facilities. In determining whether the two-facility limit is exceeded, the board will consider not only the legal entity that owns the utility, if other than a natural person, but the equity owners of the legal entity. If the owner of the facility is other than a natural person, information regarding the equity owners must be provided.

c. A description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a qualified facility as defined in Iowa Code Supplement section 476B.1);

(2) Total nameplate generating capacity rating;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service (that is, placed in service on or after July 1, 2005, but before January 1, ~~2008~~ *2009*, for eligibility under Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179).

d. A copy of the executed power purchase agreement or other agreement to purchase electricity. If the power purchase agreement has not yet been finalized and executed, the board will accept as an other agreement an executed agreement signed by at least two parties that includes both a commitment to purchase electricity from the facility upon completion of the project and most of the essential elements of a contract.

The board will also accept a copy of an executed interconnection agreement or transmission service agreement, in lieu of a power purchase agreement, if the facility owner has instead agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.

e. A statement ~~regarding~~ *indicating* the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179 (1 cent per kWh, wind energy only tax credits).

ITEM 2. Amend subrule 15.18(4) as follows:

15.18(4) Loss of eligibility status. Within 18 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 18 months of board approval, the facility will lose eligibility status.

However, *if the facility is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the filing requirement, attesting to the unavailability of necessary equipment. After granting a 12-month extension, if the board determines that the facility was not operational within 30 months of board approval, the facility will lose eligibility status. Otherwise*, the facility may reapply to the board for new eligibility.

ITEM 3. Add **new** subrule 15.18(6) as follows:

15.18(6) Waiting list for excess applications. The board will maintain a waiting list of excess eligibility applications for facilities that might have received preliminary eligibility under 199 IAC 15.18(2), but for the maximum capacity and capability restrictions under 199 IAC 15.18(5). The priorities of the waiting list will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under 199 IAC 15.18(5), the board will review the applications on the waiting list based on their priorities, before re-

viewing new applications. Applications will be removed from the waiting list after they are either approved or denied. Beginning August 31, 2007, each applicant on the waiting list shall annually provide the board a statement of verification attesting that the information contained in the applicant's eligibility application remains true and correct, or stating that the information has changed and providing the new information.

ITEM 4. Amend subrule 15.19(1) as follows:

15.19(1) Filing requirements. Any person applying for certification of eligibility for wind energy or renewable energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner ~~, and a statement that owners meeting the eligibility requirements of Iowa Code Supplement section 476C.1 are not owners of more than two eligible renewable energy facilities~~. The "legal status of each owner" refers to the ownership requirements of Iowa Code Supplement section 476C.1(6)"b," which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

(1) A resident of Iowa;

(2) An authorized farm corporation, authorized limited liability company, or authorized trust, as defined in Iowa Code section 9H.1;

(3) A family farm corporation, family farm limited liability company, or family farm trust, as defined in Iowa Code section 9H.1;

(4) A revocable trust as defined in Iowa Code section 9H.1;

(5) A testamentary trust as defined in Iowa Code section 9H.1;

(6) A small business as defined in Iowa Code section 15.102;

(7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa or has one or more members organized pursuant to Iowa Code chapter 499;

(8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 9H; or

(9) A school district located in Iowa.

c. A statement attesting that each owner meeting the eligibility requirements of Iowa Code Supplement section 476C.1(6)"b" does not have an ownership interest in more than two eligible renewable energy facilities.

d. For any owner with an equity interest in the facility equal to or greater than 51 percent, a statement attesting that the owner does not have an equity interest greater than 10 percent in any other eligible renewable energy facility.

e. For any owner with an equity interest in the facility greater than 10 percent and less than 51 percent, a statement attesting that the owner does not have an equity interest equal to or greater than 51 percent in any other eligible renewable energy facility.

~~c~~ *f.* A description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, ~~or~~ solar energy conversion facility, *or refuse conversion facility,* as defined in Iowa Code Supplement section 476C.1*)*;

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code Supplement section 476C.1;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service; that is, placed in service on or after July 1, 2005, but before January 1, ~~2011~~ *2012*, for eligibility under Iowa Code Supplement chapter 476C; and

(5) For eligibility under Iowa Code Supplement chapter 476C, demonstration that the facility's combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in Iowa Code Supplement section 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code Supplement chapter 476C, equals no more than 2.5 MW of capacity per eligible owner.

~~d~~ *g.* A copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, which shall designate either the producer or the purchaser as eligible to apply for the renewable energy tax credit. If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; that designation shall not be subject to change.

~~e~~ *h.* A statement ~~regarding~~ *indicating* the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code Supplement chapter 476C (1.5 cents per kWh, wind and other renewable energy tax credits).

ITEM 5. Amend subrule 15.19(4) as follows:

15.19(4) Loss of eligibility status. Within ~~18~~ *30* months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within ~~18~~ *30* months of board approval, the facility will lose eligibility status. However, the facility may reapply to the board for new eligibility.

ITEM 6. Amend subrule 15.19(5) as follows:

15.19(5) Allocation of capacity among eligible applicants. Iowa Code Supplement section 476C.3(4) establishes the maximum ~~amount~~ *amounts* of nameplate generating ~~capacity of facilities~~ *capacities and energy production capacity equivalents* eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will allocate the final eligibility determinations proportionally among all applications received on that date. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If

such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with 199 IAC 15.19(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

ITEM 7. Add **new** subrule 15.19(6) as follows:

15.19(6) Waiting lists for excess applications. The board will maintain waiting lists of excess eligibility applications for facilities that might have received preliminary eligibility under 199 IAC 15.19(2), but for the maximum capacity and capability restrictions under 199 IAC 15.19(5). The priorities of the waiting lists will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under 199 IAC 15.19(5), the board will review the applications on the waiting lists based on their priorities, before reviewing new applications. Applications will be removed from the waiting lists after they are either approved or denied. Beginning August 31, 2007, each applicant on a waiting list shall annually provide the board a statement of verification attesting that the information contained in the applicant's eligibility application remains true and correct, or stating that the information has changed and providing the new information.

ITEM 8. Add **new** rule 199—15.20(476B) as follows:

199—15.20(476B) Applications for wind energy tax credits under Iowa Code chapter 476B. The wind energy tax credits equal one cent per kilowatt-hour of electricity generated by and purchased from eligible wind energy facilities under 199 IAC 15.18(476B), for tax years beginning on or after July 1, 2006. The owners of an eligible facility may apply for wind energy tax credits for up to ten tax years following the date the facility is placed in service. Wind energy tax credits will not be issued for wind energy purchased after June 30, 2019.

For the first tax year for which tax credits can be claimed, the kilowatt-hours generated by and purchased from an eligible facility may exceed 12 months' production.

EXAMPLE: An eligible facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which tax credits can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credits for the 2007 tax year can include energy produced and purchased between April 1, 2006, and December 31, 2007.

15.20(1) Application process for wind energy tax credits. A wind energy facility must be approved as eligible by the board under 199 IAC 15.18(476B) in order to qualify for wind energy tax credits. The wind energy facility must also be approved by the board of supervisors of the county in which the facility is located, in accordance with Iowa Code section 476B.6(1). Once the owners receive approval from their board of supervisors, additional approval from the board of supervisors is not required for subsequent tax years.

Wind energy tax credits shall not be allowed for a facility for which the owners have claimed an exemption from property tax under Iowa Code sections 427B.26 or 441.21(8), or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with department of revenue rule 701 IAC 80.13(427B).

Tax credit applications for eligible facilities must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5)"c") and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8)"b"(3). Accordingly, the applicant should mark each of the pages of the tax credit application "CONFIDENTIAL" in bold or large letters.

a. If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199 IAC 15.20(476B)), and the following 14 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199 IAC 15.18(476B), plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199 IAC 15.18(476B).

(3) A copy of the board of supervisors' approval, from the county in which the facility is located, issued pursuant to Iowa Code section 476B.6(1).

(4) A statement attesting that the owners have not claimed an exemption for the facility from property tax under Iowa Code section 427B.26 or 441.21(8), or from sales tax under Iowa Code section 423.3(54).

(5) A statement attesting that neither the owners nor the purchaser have received renewable energy tax credits for the facility under 199 IAC 15.21(476C).

(6) A copy of the executed power purchase agreement or other agreement to purchase electricity. Alternatively, a copy of an executed interconnection agreement or transmission service agreement is acceptable if the owners have elected to sell electricity from the facility directly or indirectly to a wholesale power pool market.

(7) A statement attesting that the electricity for which tax credits are sought has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the wind energy tax credits, the definition of "related person" is the same as specified in department of revenue subrules 701 IAC 42.25(2) and 52.26(2). That is, the definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

(8) The date that the eligible facility was placed in service (that is, between July 1, 2005, and January 1, 2009).

(9) The total number of kilowatt-hours of electricity generated by the facility during the tax year.

(10) Invoices or other information that documents the number of kilowatt-hours of electricity generated by the eligible facility and sold to an unrelated purchaser during the tax year.

(11) Information regarding the facility owners, including the name, address, and tax identification number of each owner, and the percentage of equity interest held by each owner. If an owner is other than a natural person, informa-

tion regarding the equity owners must also be provided. This information shall be consistent with information provided in the original application for facility eligibility under 199 IAC 15.18(476B).

(12) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

(13) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code. This identification should include a statement from the applicant attesting to the applicant's eligibility and any available supporting documentation.

(14) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro rata share of earnings from the entity, for each of the partners, members, shareholders, or beneficiaries of the entity. The wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company, to receive the wind energy tax credits issued under Iowa Code chapter 476B, and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapter 423, 432, or 437A.

b. The board will forward the tax credit applications to the department of revenue for review and processing. Along with each forwarded application, the board will provide staff analysis and opinion regarding:

(1) The completeness of the application.

(2) The facility's eligibility status under 199 IAC 15.18(476B).

(3) Whether the reported kilowatt-hours of electricity generated by and purchased from the facility during the tax year seem accurate and eligible for wind energy tax credits.

15.20(2) Review process and computation of wind energy tax credits. The department of revenue will review the applications and opinions forwarded by the board, calculate the tax credits, and issue wind energy tax credit certificates to the facility owners, in accordance with department of revenue requirements and procedures under rules 701 IAC 42.25(422,476B), 52.26(422,476B), and 58.15(422,476B).

ITEM 9. Add **new** rule 199—15.21(476C) as follows:

199—15.21(476C) Applications for renewable energy tax credits under Iowa Code chapter 476C. The renewable energy tax credits equal 1.5 cents per kilowatt-hour of electricity, or 44 cents per 1,000 standard cubic feet of hydrogen fuel, or $4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose, generated by and purchased from eligible renewable energy facilities under 199 IAC 15.19(476C), for tax years beginning on or after July 1, 2006. Either the owners of an eligible facility or a designated purchaser of renewable energy from the facility may apply for renewable energy tax credits, for up to ten tax years following the date the facility is placed in service. Renewable energy tax credits will not be issued for renewable energy purchased after December 31, 2021.

For the first tax year for which tax credits can be claimed, the kilowatt-hours, standard cubic feet, or British thermal units generated by and purchased from an eligible facility may exceed 12 months' production.

EXAMPLE: An eligible facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which tax credits can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include renewable energy produced and purchased between April 1, 2006, and December 31, 2007.

15.21(1) Application process for renewable energy tax credits. A renewable energy facility must be approved as eligible by the board under 199 IAC 15.19(476C) in order to qualify for renewable energy tax credits. Tax credit applications must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5)"c") and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8)"b"(3). Accordingly, the applicant should mark each of the pages of the tax credit application "CONFIDENTIAL" in bold or large letters.

a. Either the facility owners or the purchaser of renewable energy shall be eligible to apply for the tax credits, as designated under 199 IAC 15.19(1)"g." If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199 IAC 15.21(476C)), and the following 12 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199 IAC 15.19(476C), plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199 IAC 15.19(476C).

(3) A statement attesting that the owners have not received wind energy tax credits for the facility under 199 IAC 15.20(476B).

(4) A copy of the power purchase agreement or other agreement to purchase from the facility electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose. The agreement shall designate whether the producer or purchaser of renewable energy will be eligible to apply for

the tax credits and shall be consistent with the designation originally filed under 199 IAC 15.19(1)"g."

(5) A statement attesting that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, for which tax credits are sought, has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the renewable energy tax credits, persons are related to each other if either person owns an 80 percent or more equity interest in the other person.

(6) The date that the eligible facility was placed in service (that is, between July 1, 2005, and January 1, 2012).

(7) The total number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility during the tax year.

(8) Invoices or other information that documents the number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility and sold to an unrelated purchaser during the tax year.

(9) Information regarding the facility owners or designated eligible purchaser, including the name, address, and tax identification number of each owner or purchaser. If the application is filed by the facility owners, this shall also include the percentage of equity interest held by each owner. This information shall be consistent with ownership information provided in the original application for facility eligibility under 199 IAC 15.19(476C).

(10) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

(11) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code. This identification should include a statement from the applicant attesting to the applicant's eligibility and any available supporting documentation.

(12) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro-rata share of earnings from the entity for each of the partners, members, shareholders, or beneficiaries of the entity. The renewable energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company to receive the renewable energy tax credits issued under Iowa Code chapter 476C and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the renewable energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapter 423, 432, or 437A.

b. The board will forward the tax credit applications to the department of revenue for review and processing. Along with each forwarded application, the board will provide staff analysis and opinion regarding:

(1) The completeness of the application.

(2) The facility's eligibility status under 199 IAC 15.19(476C).

(3) Whether the reported kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by and purchased from the facility during the tax year seem accurate and eligible for renewable energy tax credits.

15.21(2) Review process and computation of renewable energy tax credits. The department of revenue will review the applications and opinions forwarded by the board, calculate the tax credits, and issue renewable energy tax credit certificates to the facility owners or designated purchaser, in accordance with department of revenue requirements and procedures under 701 IAC 42.26(422,476C), 52.27(422,476C), and 58.16(422,476C).

ARC 5390B

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

In 2006 Iowa Acts, House File 2282, section 2, the legislature made changes to Iowa Code section 372.13(2) that became effective on July 1, 2006. These changes affect the ability of county commissioners of elections to conduct special elections to fill vacancies in elective city offices. The revised language in Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2, shortens the time period between the deadline for a city to notify the county commissioner of the proposed date of a special election and the date of the special election. For cities that may require primary elections, the time period has been shortened from 85 days to 60 days. For all other cities, the time period has been shortened from 60 days to 32 days. The new language does not, however, change the statutorily prescribed number of days before election day for candidates to file nomination papers with the city clerk, for the city clerk to deliver those nomination papers to the county commissioner, for candidates to withdraw, for the filing of objections to nomination papers, and for holding the hearing to decide on those objections. All of these events have statutorily determined dates that, with the enactment of 2006 Iowa Acts, House File 2282, section 2, now fall before the deadline for the city to request an election date. Iowa Code section 372.13(2) as amended by House File 2282, section 2, indicates that special elections held under subsection 2 of Iowa Code section 372.13 are subject to the procedural deadlines in Iowa Code sections 376.4 through 376.11, "but the dates for actions in relation to the special election . . . shall be calculated with regard to the date for which the special election is called." The statute does not provide a method for adjusting the conflicting deadlines now found within Iowa Code section 372.13(2). In order to provide county auditors and city governments with a workable calendar, the Secretary of State finds it necessary to prescribe new deadlines that fall within the time period now allowed to prepare for these special elections.

The agency finds, in compliance with Iowa Code section 17A.4(2), that notice and public participation are impracticable because the legislative changes are currently in effect, and there are many county commissioners in the state who are currently working with cities to schedule special elections to fill vacancies in elective city offices.

The agency also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on August 25, 2006, as the amendment provides urgently needed guidance to county commissioners of elections as they prepare to conduct elections for cities with recent vacancies.

The Secretary of State adopted these rules on August 25, 2006.

These rules became effective August 25, 2006.

These rules are intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend 721—Chapter 21 by adopting the following **new** rules:

721—21.403(81GA,HF2282) Special elections to fill vacancies in elective city offices for cities that may be required to conduct primary elections.

21.403(1) Notice to the commissioner. At least 60 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election.

a. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

b. No special city elections to fill vacancies for cities that may be required to conduct primary elections shall be held with the general election, with the primary election, or with the annual school election. To do so would be contrary to the provisions of Iowa Code section 39.2.

21.403(2) Election calendar. The election calendar shall be adjusted as follows:

a. The deadline for candidates to file nomination papers with the city clerk shall be not later than 12 noon on the fifty-third day before the election.

b. The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the fifty-third day before the election.

c. A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the fiftieth day before the election.

d. A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election not later than 12 noon on the fiftieth day before the election.

e. The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

721—21.404(81GA,HF2282) Special elections to fill vacancies in elective city offices for cities without primary election requirements. This rule applies to cities that have adopted by ordinance one of the following options: nominations under Iowa Code chapter 44 or chapter 45, or a runoff election requirement if no candidate in the special election receives a majority of the votes cast.

21.404(1) Notice to the commissioner. At least 32 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

21.404(2) Special elections to fill vacancies held in conjunction with the general election. If the proposed date of the special election coincides with the date of the general election, the council shall give notice of the proposed date of the special city election not later than 76 days before the date of

SECRETARY OF STATE[721](cont'd)

the general election. Candidates shall file nomination papers with the city clerk not later than 5 p.m. on the seventieth day before the general election. The city clerk shall deliver the nomination papers accepted by the clerk not later than 5 p.m. on the sixty-ninth day before the general election. Objection and withdrawal deadlines shall be 64 days before the general election, the same as the deadlines for candidates who file their nomination papers with the commissioner. Hearings on objections shall be held as soon as possible in order to facilitate printing of the general election ballot.

21.404(3) Election calendar. If the special election date is not the same as the date of the general election, the election calendar shall be adjusted as follows:

a. The deadline for candidates to file nomination papers with the city clerk shall be not later than 12 noon on the twenty-fifth day before the election.

b. The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the twenty-fifth day before the election.

c. A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the twenty-second day before the election.

d. A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election not later than 12 noon on the twenty-second day before the election.

e. The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

[Filed Emergency 8/25/06, effective 8/25/06]
[Published 9/27/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/06.

ARC 5394B

DEAF SERVICES DIVISION[429]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 216A.115, the Division of Deaf Services of the Department of Human Rights amends Chapter 1, "Organization," Iowa Administrative Code.

This amendment aligns committee work of the Commission on the Deaf with agency activities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 7, 2006, as **ARC 5152B**. Two individuals made public comments in favor of the amendment. The adopted amendment is identical to that published under Notice.

This amendment was approved during the August 26, 2006, meeting of the Commission on the Deaf.

This amendment will become effective on November 1, 2006.

This amendment is intended to implement Iowa Code chapter 216A.

The following amendment is adopted.

Amend subrule 1.3(5) as follows:

1.3(5) Standing committees. The following standing committees are established: ~~personnel, legislative, public information, program services and policies, finance, and division rules~~ *program services, legislative/division rules, and public information/outreach*. Two commission members, together with the administrative officer, shall serve on each committee; and any member may serve on several committees at one time. Each member, except the chairperson, shall serve on at least one committee. The purpose of the committees is to address specific program areas of the division, perform research on those issues, and make policy recommendations to the commission ~~body~~. Any party wanting to comment, make suggestions, or discuss concerns may contact the administrative officer or the chairperson to refer an issue to the members serving on the specific committee. Names of members may be obtained by calling the division of deaf services, central office. The committees' functions are:

a. ~~Personnel~~ *Program services.* Review personnel materials and policies developed for the division and to be recommended to the commission, *define programs and evaluate the services on a regular basis, evaluate effectiveness of services provided and make recommendations to the commission as appropriate, identify options and goals for growth and accomplishments for the annual report to the governor, consider expansion of current services or the development of new program components to meet the needs of the community served, develop formal program policies, make recommendations to the commission on annual budget proposals, address financial issues as they arise, attend budget presentations, develop strategies to encourage funding of the program, and research the availability of grants.*

b. Legislative*/division rules.* Research and recommend legislative issues and priorities to the commission~~. Develop~~, *develop* strategies for citizens to encourage passage of legislation~~. Play~~, *play* a direct and active role in encouraging passage of legislation, *review and make recommendations to the commission regarding changes to division rules, and attend meetings related to division rules*.

c. Public information*/outreach*. Strive to ensure public awareness and encourage constructive use of the services by those who need them~~. Plan~~ , *plan* workshops, open houses, and other awareness-promoting activities~~. Establish~~ , *establish* and maintain relationships with other agencies serving the deaf and hard-of-hearing~~. Develop~~ , *and develop* specific measures to increase visibility throughout the state.

~~d. Program services and policies. Define the program and evaluate the services on a regular basis. Evaluate effectiveness of services provided and make recommendations to the commission as appropriate. Identify options and goals for growth and accomplishments for the annual report to the governor. Consider expansion of current services or the development of new program components to meet the needs of the community served. Develop formal program policies.~~

~~e. Finance. Make recommendations to the commission on annual budget proposals, address financial issues as they arise, attend budget presentations, develop strategies to encourage funding of the program, and research availability of grants.~~

~~f. Division rules. Review and make recommendations to the commission regarding division rule changes. Attend meetings related to the division rules.~~

[Filed 9/6/06, effective 11/1/06]
[Published 9/27/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/06.

ARC 5388B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," and Chapter 22, "Controlling Pollution," and adopts a new Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

The primary purpose of the amendments is to adopt into the state air quality rules major changes to the federal New Source Review regulations (commonly called NSR Reform).

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 7, 2006, as **ARC 5154B**. A public hearing was held on July 10, 2006. One set of written comments was received prior to the close of the public comment period, which closed on July 12, 2006.

The submitted comments and the Department's response to the comments are summarized in a responsiveness summary available from the Department. The adopted amendments contain minor modifications from the proposed amendments published under Notice of Intended Action to address the public comments, as detailed in the description of the changes to new Chapter 33.

On December 31, 2002, the U.S. Environmental Protection Agency (EPA) promulgated revisions to the Nonattainment New Source Review (NSR) provisions in 40 CFR 51.165 and the Prevention of Significant Deterioration (PSD) provisions for attainment area NSR in 40 CFR 51.166 and 52.21. Both of these programs are mandated by Parts C and D of Title I of the federal Clean Air Act. EPA states in the preamble to the federal rule making that these revisions are intended to "reduce burden, maximize operating flexibility,

improve environmental quality, provide additional certainty, and promote administrative efficiency."

The NSR program contained in Parts C and D of Title I of the Clean Air Act is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Clean Air Act. The Department estimates that there are approximately 300 major stationary sources in the state.

Areas that do not meet the National Ambient Air Quality Standards (NAAQS) are referred to as nonattainment areas. In these areas, the nonattainment NSR program applies to new or modified major stationary sources. In areas that meet the NAAQS, referred to as attainment areas, the PSD program applies to new or modified major stationary sources. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Three elements of the major NSR program are affected by these rules. These elements include the procedure for calculating baseline actual emissions, actual-to-projected-actual emissions calculation methodology, and plantwide applicability limitations (PALs). This rule making also adds a new definition of "regulated NSR pollutant" that clarifies which pollutants are regulated for the purposes of major NSR.

By federal law, the Department must adopt this rule making and submit revisions to its major NSR permitting program to implement these minimum program elements in the Iowa State Implementation Plan (SIP). The SIP contains provisions, such as the preconstruction review program, that are intended to ensure that the NAAQS are achieved and maintained in the state. The SIP revision request was required to have been submitted to EPA by no later than January 6, 2006.

The Department originally proposed NSR Reform rules in a Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 4005B** on February 16, 2005. The public comment period for **ARC 4005B** closed on May 2, 2005. The Department was in the process of preparing final rules when the U.S. Court of Appeals, District of Columbia, issued a ruling on June 24, 2005, for State of New York, et al. (Petitioners) v. U.S. EPA (Respondent), vacating and remanding several provisions of the federal regulations. This ruling had serious implications for the rules proposed in **ARC 4005B**. The Department awaited guidance from EPA, which was not forthcoming at the time. Additionally, the Department was required to either issue an Adopted and Filed rule making or terminate the Notice by September 23, 2005. The Department could not adopt final rules in light of the Court action and the lack of EPA guidance. As such, the Department elected to terminate the Notice of Intended Action. The Notice of Termination was published in the Iowa Administrative Bulletin as **ARC 4563B** on October 12, 2005.

Since the termination of the Department's original NSR Reform rules, EPA has provided guidance that is sufficient for the Department to proceed with final rules. The Department is now adopting final rules to comply with EPA's requirements that Iowa modify its SIP to adopt NSR Reform.

The Department has elected not to adopt the nonattainment portion of NSR Reform, as federally promulgated under 40 CFR 51.165. In a letter dated June 1, 2005, to the Department, EPA Region VII confirmed that the Department does not need to propose nonattainment NSR Reform rules at this time because Iowa does not have any nonattainment areas. The Department may wait to propose nonattainment NSR Reform rules until such time as Iowa has an area designated as nonattainment. As such, the current rules for major sources in nonattainment areas, as required under Part D of Title I of the federal Clean Air Act, and as currently set forth under 567—22.5(455B) and 567—22.6(455B), will remain in effect.

Prior to proposing the original NSR Reform rule making, the Department convened a technical workgroup on March 30, 2004, facilitated by the Iowa Department of Economic Development, to review the elements of the major NSR program affected by the federal NSR Reform regulations. The workgroup was tasked with making recommendations to the Department regarding the adoption of the federal rule making into the Iowa Administrative Code. The workgroup was composed of affected stakeholders who have experience with and knowledge of the major NSR program and was supported by permitting staff from the Department. The recommendations of the workgroup and the Department's actions regarding the recommendations are summarized in the "NSR Reform Workgroup Recommendation Summary" document, available from the Department.

The consensus reached by the workgroup was that the text of EPA's major NSR Reform rules should be adopted directly into the Iowa Administrative Code rather than adopted by reference. This approach allows the Department to reorganize and consolidate portions of the federal major NSR Reform rules to make them easier for the regulated public to understand and implement. The ability of the Department to have additional flexibility to address issues subject to interpretation on a case-by-case basis was a feature desired by many of the workgroup members.

Since the Department's original NSR Reform proposal, the Department has conferred with EPA on this approach. EPA had concerns about tracking the Department's changes from the federal regulations, even though the Department provided a summary of all changes and a spreadsheet that cross-referenced the federal and state citations. EPA requested that the Department consider adopting the NSR Reform rules by reference to ease EPA approval of Iowa's rules into the SIP. EPA also suggested that, since significant changes to the federal regulations in the future were possible, adoption by reference would make it easier for the Department to modify state rules in the future.

In this final rule making, the Department used a combination of EPA's and the workgroup's recommendations. The definitions and applicability portions for the PSD program are written into the final rules rather than adopted by reference. These provisions are the basis of PSD applicability and constitute the provisions which potentially affected facilities and Department staff access and reference the most frequently.

Other federal sections, such as those pertaining to required PSD analyses, and the provisions for plantwide applicability limitations (PALs), are adopted by reference. In the original rule making, the Department had made very few changes from the federal regulations for these provisions. Adoption by reference of these sections will allow for some brevity and succinctness to these very lengthy federal regulations.

One workgroup member submitted an individual recommendation for consideration. This recommendation, which was also submitted as a written comment during the public comment period for the original Notice, pertained to the exemption from some provisions of the PSD rules for nonprofit health or nonprofit educational institutions. The PSD rules currently adopted by the Department allow a nonprofit health or nonprofit educational institution to be exempted from the requirements of 40 CFR Part 52.21, paragraphs "j" through "r," if the Governor so requests. The provisions of 40 CFR Part 52.21, paragraphs "j" through "r," include the require-

ments to conduct a control technology review; a source impact analysis; preconstruction and postconstruction monitoring; analysis of the impairment to visibility, soils and vegetation as a result of the project; and an analysis of the impact on nearby protected federal Class I areas. The individual recommendation was that the Department instead allow exemption from the requirements of 40 CFR Part 52.21, paragraphs "j" through "r," for nonprofit health or nonprofit educational institutions without gubernatorial approval, as provided for in 40 CFR Part 51.166(i).

However, the Department has determined that it will continue with its current practice of allowing exemptions from the PSD permitting requirements of paragraphs "j" through "r" of 40 CFR Part 52.21 only upon the request of the Governor, as provided for under 40 CFR Part 52.21(i). Continuing this practice will ensure that possible public health and welfare consequences of proposed changes at a nonprofit health or nonprofit educational institution are considered before an exemption is granted from the specified PSD permitting requirements.

Item 1 amends 567—Chapter 20 to refer to 567—Chapter 33 for special requirements for permitting of major stationary sources.

Item 2 rescinds rule 567—22.4(455B) and adopts a new rule that refers to the PSD requirements in 567—Chapter 33. Item 2 will direct users of the Iowa Administrative Code from rule 567—22.4(455B) to 567—Chapter 33 until all references to rule 567—22.4(455B) are identified and changed to 567—Chapter 33 in a subsequent rule making. Once this process has been accomplished, new rule 567—22.4(455B) will be rescinded.

Item 3 amends rule 567—22.6(455B) to update the reference to the federal regulation that lists nonattainment area designations. Although the list of Iowa's nonattainment area designations did not change, EPA made changes to other nonattainment area designations.

Item 4 adopts new 567—Chapter 33. This chapter contains the PSD regulations and construction permitting requirements for major stationary sources.

These amendments contain some significant changes to 567—Chapter 33 from the Notice proposed under **ARC 4005B**. The previous provisions for Clean Units and Pollution Control Projects (PCP), including the definitions and all references to these classifications, are not included in these amendments. The Court vacated these provisions in its ruling in June 2005. EPA has indicated that not including these provisions in the state rules is an acceptable approach.

In a separate action on March 17, 2006, the D.C. Court of Appeals, in State of New York et al. (Petitioners) v. U.S. EPA (Respondent), overturned what is commonly called the Equipment Replacement Rule portion of NSR Reform. The provisions of the Equipment Replacement Rule had been previously stayed by the Court, and thus were not included in the Department's original Notice. However, EPA commented that the original PSD provisions for routine maintenance and repair had not been stayed. As such, the Department is including in 567—Chapter 33 the previous PSD provisions that had been adopted by reference in 567—Chapter 22 for routine maintenance and repair of equipment.

In addition, the Department has included record-keeping requirements under the source obligation provisions of subrule 33.3(18) that are different from the corresponding federal regulations. This change addresses the Court's remand of the federal provisions back to EPA. EPA has yet to take any action on the Court's remand, and has not issued guidance to states on how to address this issue in state rule makings. However, EPA Region VII has offered informal recommendations that may address the Court's underlying concerns. The Department is adopting herein record-keeping language that incorporates EPA Region VII's informal recommendations, as well as text that is similar to that which some other states are adopting.

In response to the public comments submitted by EPA Region VII, the Department has made minor corrections and clarifications to the adopted rules in Chapter 33 from those that were published under Notice as **ARC 5154B**.

EPA Region VII suggested a number of minor corrections to subrule 33.3(1) in order to be consistent with the federal NSR Reform regulations. In response, the Department made minor changes to the wording in the following definitions in subrule 33.3(1):

- "Allowable emissions," paragraph "3."
- "Baseline area," paragraphs "2" and "3."
- "Baseline date," paragraph "1"(b).

EPA also commented on the inclusion of the word "commences" in the definition of "projected actual emissions" in subrule 33.3(1). EPA stated that inclusion of the term "commences" could imply that the actual-to-projected-actual test described in this definition could apply to new units. Both the federal regulations and the state rules are meant to refer only to existing units. As such, the Department has removed the term "commences" from the final rule.

EPA commented on the adoption by reference of several appendices to 40 CFR Parts 51 and 52 that were included in the Notice in subrule 33.3(2). It was the Department's original understanding that these appendices should be adopted. However, EPA submitted comments stating that not all of the appendices relate directly to PSD, and it may not be necessary for the Department to adopt all of the appendices. The Department agrees that adoption of these appendices, with the exception of 40 CFR Part 51, Appendix W, is not necessary. Appendix W is the only one of these appendices that was previously adopted into the state PSD provisions under rule 567—22.4(455B). As such, the Department is modifying the final rules to adopt by reference only 40 CFR Part 51, Appendix W.

Finally, the Department made minor corrections to the language in subrule 33.3(16) and rule 567—33.10(455B) in response to EPA's comments. The Department made a minor clarification to subparagraph 33.3(18)"f"(3).

These amendments are intended to implement Iowa Code section 455B.133.

These amendments will become effective on November 1, 2006.

The following amendments are adopted.

ITEM 1. Amend rule **567—20.1(455B,17A)**, second unnumbered paragraph, as follows:

Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. Chapter 22 contains the standards and procedures for permitting of emission sources and the special requirements for nonattainment areas. Chapter 23 contains the air emission standards for contaminants. Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. Chapter 25 contains the testing and sampling requirements for new and existing sources. Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies. Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. Chapter 28 identifies the state ambient air quality standards. Chapter 29 sets forth the qualifications

for an observer for reading visible emissions. Chapter 31 contains the conformity of general federal actions to the Iowa state implementation plan or federal implementation plan. Chapter 32 specifies requirements for conducting the animal feeding operations field study. *Chapter 33 contains special regulations and construction permit requirements for major stationary sources and includes the requirements for prevention of significant deterioration (PSD).* Chapter 34 contains provisions for air quality emissions trading programs.

ITEM 2. Rescind rule 567—22.4(455B) and adopt the following **new** rule in lieu thereof:

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). The rules for prevention of significant deterioration (PSD) are contained in 567—Chapter 33.

ITEM 3. Amend rule 567—22.6(455B) as follows:

567—22.6(455B) Nonattainment area designations. Section 107(d) of the Act, 41 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the *national* ambient air quality standards, that are lower than those standards, or that cannot be classified on the basis of current data. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316 as amended through ~~March 19, 1998~~ *April 30, 2004*. The commission uses the document entitled "Criteria for Revising Nonattainment Area Designations"* (June 14, 1979) to determine when and to what extent the list will be revised and resubmitted.

*Filed with the Administrative Rules Coordinator, also available from the department.

ITEM 4. Adopt **new** 567—Chapter 33 as follows:

CHAPTER 33
SPECIAL REGULATIONS AND
CONSTRUCTION PERMIT REQUIREMENTS
FOR MAJOR STATIONARY SOURCES—
PREVENTION OF SIGNIFICANT DETERIORATION
(PSD) OF AIR QUALITY

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through November 29, 2005. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B) and 567— 22.6(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Rule 567—33.2(455B) is reserved.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rules 567—33.4(455B) through 567—33.8(455B) are reserved.

Rule 567—33.9(455B) includes the conditions under which a source subject to PSD may obtain a plantwide applicability limitation (PAL) on emissions.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22, including requirements for Title V operating permits.

567—33.2(455B) Reserved.

567—33.3(455B) Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD).

33.3(1) Definitions. Definitions included in this subrule apply to the provisions set forth in this rule (PSD program requirements). For purposes of this rule, the definitions herein shall apply, rather than the definitions contained in 40 CFR 52.21 and 51.166, except for the PAL program definitions referenced in rule 567—33.9(455B). For purposes of this rule, the following terms shall have the meanings indicated in this subrule:

"Act" means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended through November 15, 1990.

"Actual emissions" means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs "2" through "4," except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under rule 567—33.9(455B). Instead, the requirements specified under the definitions for "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator for the United States Environmental Protection Agency (EPA) or designee.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The applicable state implementation plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

"Baseline actual emissions," for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulat-

ed NSR pollutant, as "regulated NSR pollutant" is defined in this subrule, and as determined in accordance with paragraphs "1" through "4."

1. For any existing electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding the date on which the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with start-ups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph "1"(b) of this definition.

2. For an existing emissions unit, other than an electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date on which the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with start-ups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emissions limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) as amended through November 29, 2005.

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs "2"(b) and "2"(c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph "1"; for other existing emissions units in accordance with the procedures contained in paragraph "2"; and for a new emissions unit in accordance with the procedures contained in paragraph "3."

"Baseline area" means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m^3 (annual average) of the pollutant for which the minor source baseline date is established.

2. Area redesignations under Section 107(d)(1)(D) or (E) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA under 40 CFR Part 51, Subpart I, and would be constructed in the same state as the state proposing the redesignation.

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of "baseline date" specified in this subrule.

"Baseline concentration" means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph "2" of this definition;

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date" means:

1. Either "major source baseline date" or "minor source baseline date" as follows:

(a) The "major source baseline date" means, in the case of particulate matter and sulfur dioxide, January 6, 1975, and in the case of nitrogen dioxide, February 8, 1988.

(b) The "minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through November 29, 2005, or subject to this rule (PSD program requirements), or subject to a department rule approved by EPA under 40 CFR Part 51, Subpart I, submits a complete application under the relevant regulations. The trigger date for particulate matter and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988.

2. The "baseline date" is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through November 29, 2005, or under regulations specified in this rule (PSD program requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

"Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by title and part, so that "40 CFR 51" or "40 CFR Part 51" means "Title 40 Code of Federal Regulations, Part 51."

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this chapter,

to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this chapter, to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O_2 or CO_2 concentrations), and to record the average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in "1" above. A replacement unit is an existing emissions unit.

"Enforceable permit condition," for the purpose of this chapter, means any of the following limitations and conditions: requirements development pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through November 29, 2005, or under conditional, construction or Title V operating permit rules.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through November 29, 2005, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

"Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the SIP for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Low terrain" means any area other than high terrain.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_x shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated;

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under rule 567—33.9(455B) shall apply.

"Major source baseline date" is defined under the definition of "baseline date."

"Major stationary source" means:

1. (a) Any one of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mill plants;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 250 tons of refuse per day;
- Hydrofluoric, sulfuric, and nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants;
- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants; and
- Charcoal production plants.

(b) Notwithstanding the stationary source size specified in paragraph "1"(a), any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source if the change would constitute a major stationary source by itself.

2. A major source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

3. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in paragraph "1"(a) of this definition or to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"Minor source baseline date" is defined under the definition of "baseline date."

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the SIP.

"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under subrule 33.3(2); and
- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this definition of "net emissions increase" shall be determined as provided for under the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) of the definition of "baseline actual emissions," which describe provisions for multiple emissions units, shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

(a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

(b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

3. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if the increase or decrease in actual emissions is required to be considered in calculating the amount of maximum allowable increases remaining available.

4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

5. A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) The decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

6. An increase that results from a physical change at a source occurs when the emissions unit on which construction

occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

7. The definition of "actual emissions," paragraph "2," shall not apply for determining creditable increases and decreases.

"Nonattainment area" means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

"Permitting authority" means the Iowa department of natural resources or the director thereof.

"Pollution prevention" means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. "Pollution prevention" does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP or means the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

"Project" means a physical change in, or change in method of operation of, an existing major stationary source.

"Projected actual emissions," for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. For purposes of this definition, "regular" shall be determined by the department on a case-by-case basis.

In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4. In lieu of using the method set out in paragraphs "1" through "3," may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation in which the unit:

1. Has not been in operation for the two-year period prior to the enactment of the Act, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of the enactment;

2. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

3. Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

4. Is otherwise in compliance with the requirements of the Act.

"Regulated NSR pollutant" means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds and NO_X are precursors for ozone);

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act; except that any or all hazardous air pollutants either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act, which have not been delisted pursuant to Section 112(b)(3) of the Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs "1" through "4" of this definition are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not change the basic design parameter(s) of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions

unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion; integrated gasification combined cycle; magnetohydrodynamics; direct and indirect coal-fired turbines; integrated gasification fuel cells; or, as determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of these technologies; and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

2. Repowering shall also include any oil or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

3. The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under Section 409 of the Act.

"Reviewing authority" means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this chapter, "secondary emissions" must be specific, well-defined, and quantifiable, and must impact the same general areas as the stationary source modification which causes the secondary emissions. "Secondary emissions" includes emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. "Secondary emissions" does not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions or 15 tpy of PM_{10} emissions
- Ozone: 40 tpy of volatile organic compounds or NO_x
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H_2 S): 10 tpy
- Total reduced sulfur (including H_2 S): 10 tpy
- Reduced sulfur compounds (including H_2 S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. "Significant" means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph "1," any emissions rate.

3. Notwithstanding paragraph "1," "significant," for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/m^3 (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"State implementation plan" or "SIP" means the plan adopted by the state of Iowa and approved by the Administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

"Title V permit" means an operating permit under Title V of the Act.

"Volatile organic compounds" or "VOC" means any compound included in the definition of "volatile organic compounds" found at 50 CFR 51.100(s) as amended through November 29, 2004.

33.3(2) Applicability. The requirements of this rule (PSD program requirements) apply to the construction of any new "major stationary source" as defined in subrule 33.3(1) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act. In addition to the provisions set forth in rules 567—33.3(455B) through 567—33.9(455B), the provisions of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) as amended through November 9, 2005, are adopted by reference.

a. The requirements of subrules 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule (PSD program requirements) otherwise provides.

b. No new major stationary source or major modification to which the requirements of subrule 33.3(10) through paragraph 33.3(18)"e" apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

c. Except as otherwise provided in paragraphs 33.3(2)"i" and "j," and consistent with the definition of "major modification" contained in subrule 33.3(1), a project is a major modification for a "regulated NSR pollutant" if it causes two types of emissions increases: a "significant emissions increase"; and a "net emissions increase" which is "significant." The project is not a major modification if it does

not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

d. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs "e" through "h" of this subrule. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

e. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "projected actual emissions" and the "baseline actual emissions" for each existing emissions unit equals or exceeds the significant amount for that pollutant.

f. Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "potential to emit" from each new emissions unit following completion of the project and the "baseline actual emissions" for a new emissions unit before the project equals or exceeds the significant amount for that pollutant.

g. Reserved.

h. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs "e" through "g" of this subrule, as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

i. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 567—33.9(455B).

j. Reserved.

33.3(3) Ambient air increments. The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through November 29, 2005, are adopted by reference.

33.3(4) Ambient air ceilings. The provisions for ambient air ceilings as specified in 40 CFR 52.21(d) as amended through November 29, 2005, are adopted by reference.

33.3(5) Restrictions on area classifications. The provisions for restrictions on area classifications as specified in 40 CFR 52.21(e) as amended through November 29, 2005, are adopted by reference.

33.3(6) Exclusions from increment consumption. The provisions by which the SIP may provide for exclusions from increment consumption as specified in 40 CFR 51.166(f) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(f) are not adopted by reference: "the plan may provide that," "the plan provides that," and "it shall also provide that." Additionally, the term "the plan" shall mean "SIP."

33.3(7) Redesignation. The provisions for redesignation as specified in 40 CFR 52.21(g) as amended through November 29, 2005, are adopted by reference.

33.3(8) Stack heights. The provisions for stack heights as specified in 40 CFR 52.21(h) as amended through November 29, 2005, are adopted by reference.

33.3(9) Exemptions. The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) as amended through November 29, 2005, are adopted by reference.

33.3(10) Control technology review. The provisions for control technology review as specified in 40 CFR 52.21(j) as amended through November 29, 2005, are adopted by reference.

33.3(11) Source impact analysis. The provisions for a source impact analysis as specified in 40 CFR 52.21(k) as amended through November 29, 2005, are adopted by reference.

33.3(12) Air quality models. The provisions for air quality models as specified in 40 CFR 52.21(l) as amended through November 29, 2005, are adopted by reference.

33.3(13) Air quality analysis. The provisions for an air quality analysis as specified in 40 CFR 52.21(m) as amended through November 29, 2005, are adopted by reference.

33.3(14) Source information. The provisions for providing source information as specified in 40 CFR 52.21(n) as amended through November 29, 2005, are adopted by reference.

33.3(15) Additional impact analyses. The provisions for an additional impact analysis as specified in 40 CFR 52.21(o) as amended through November 29, 2005, are adopted by reference.

33.3(16) Sources impacting federal Class I areas—additional requirements. The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(p) are not adopted by reference: "the plan may provide that," "the plan shall provide that," "the plan shall provide" and "mechanism whereby."

33.3(17) Public participation.

a. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

b. Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) Send a copy of the notice of public comment to the applicant, to the Administrator and to officials and agencies

having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to the proposed source or modification, the control technology required, and other appropriate considerations. At least 30 days' notice shall be provided for any public hearing.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection at the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the proposed source or modification.

33.3(18) Source obligation.

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of subrules 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

c. to e. Reserved.

f. The following specific provisions shall apply to projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances in which a project is not part of a major modification, and the owner or operator elects to use the method for calculating projected actual emissions as specified in subrule 33.3(1), paragraphs "1" through "3" of the definition of "projected actual emissions."

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions" in subrule 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner's or operator's determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in paragraph "f." The owner or operator is not required to obtain a determination from the department regarding the project's projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);

2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, "regular" shall be determined by the department on a case-by-case basis); and

3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is "significant" as defined in subrule 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;

2. The annual emissions as calculated pursuant to subparagraph (4); and

3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph "f" available for review upon request for

inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

33.3(19) Innovative control technology. The provisions for innovative control technology as specified in 40 CFR 51.166(s) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(s) are not adopted by reference: "the plan may provide that" and "the plan shall provide that."

33.3(20) Conditions for permit issuance. Except as explained below, a permit may not be issued to any new "major stationary source" or "major modification" as defined in subrule 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Pollutant	(ug/m^3)	(ug/m^3)	(ug/m^3)	(ug/m^3)	(ug/m^3)
SO_2	1.0	5	———	25	———
PM_{10}	1.0	5	———	———	———
NO_2	1.0	———	———	———	———
CO	———	———	500	———	2000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

567—33.4(455B) to **567—33.8(455B)** Reserved.

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) as amended through November 29, 2005, are adopted by reference, except that the term "Administrator" shall mean "the department of natural resources."

567—33.10(455B) Exceptions to adoption by reference. All references to Clean Units and Pollution Control Projects set forth in 40 CFR Sections 52.21 and 51.166 are not adopted by reference.

These rules are intended to implement Iowa Code chapter 455B.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/06.

ARC 5389B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.172(5), the Environmental Protection Commission rescinds Chapter 68, "Commercial Septic Tank Cleaners," and adopts a new Chapter 68 with the same title, and amends Chapter 69, "Onsite Wastewater Treatment and Disposal Systems," Iowa Administrative Code.

New adopted Chapter 68 will:

- Add and modify definitions.
- Require the submission of an annual waste management plan.
- Increase fees from $25 per year to an average of $500 per year based primarily upon volume of waste pumped.
- Require inspections for pump trucks and land disposal sites and grant the authority to contract with counties to do the inspections.
- Require that portable toilet waste be taken only to a public wastewater treatment plant.
- Clarify land spreading requirements for septage.
- Increase the fines assessed for violation of the rules from $25 to $250 per day.

The amendments to Chapter 69 delete any repetition of sections of Chapter 68.

These chapters and their amendments were reviewed by the DNR Water Supply Section engineers, licensed septic tank pumping contractors, and county sanitarians.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 5042B** on April 12, 2006. Six public hearings were held. Oral comments from 43 individuals and written comments from 2 individuals and 2 associations were received during the initial six public hearings. Participants' questions were answered after each public hearing. The comments have been addressed in the responsiveness summary which can be obtained from the Department.

In June, the Administrative Rules Review Committee asked that a regulatory analysis be prepared and the public comment period extended. The regulatory analysis was published in the Iowa Administrative Bulletin on July 5, 2006, and a seventh public hearing was held in Des Moines on July 26, 2006. During this extended comment period and hearing,

comments were received from four additional individuals (two at the hearing and two in writing). An amendment to the responsiveness summary was written.

Based on all the comments received and amendments approved by the Environmental Protection Commission, the following changes were made from the Notice of Intended Action.

- In 68.10(2)"c"(2)"5," the amount of waste that may be spread on frozen ground was lowered to 2,500 gallons per acre.
- To be consistent with the definitions, the word "waste" was replaced with the word "septage" in the following: 68.4(3), 68.6(1), 68.6(2) and 68.6(3); 567—68.7(455B) and 567—68.10(455B), introductory paragraph; and 68.10(2)"c"(4)"3."
- In 68.10(2)"c"(2)"8," the separation distance between land spreading sites and the nearest residence was changed to 750 feet with an exception for the residence of the owner of the septic tank being pumped.

Copies of relevant rules may be obtained from Tricia Snyder, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034.

These amendments may have an impact on small business.

These amendments are intended to implement Iowa Code section 455B.172.

These amendments will become effective on November 1, 2006.

The following amendments are adopted.

ITEM 1. Rescind 567—Chapter 68 and adopt the following **new** chapter in lieu thereof:

CHAPTER 68
COMMERCIAL SEPTIC TANK CLEANERS

567—68.1(455B) Purpose and applicability. The purpose of this chapter is to implement Iowa Code subsection 455B.172(5) by providing standards for the commercial cleaning of and the disposal of waste from private sewage disposal systems and by providing licensing requirements and procedures. These rules govern the commercial cleaning of and the disposal of wastes from private sewage disposal systems.

567—68.2(455B) Definitions. For purposes of this chapter, the following terms shall have the meanings indicated:

"Cleaning" means removal of waste from private sewage disposal systems and other actions incidental to that removal.

"Commercial septic tank cleaner" means a person or firm engaged in the business of cleaning and disposing of waste from private sewage disposal systems, including a person or firm that owns and rents or leases portable toilets.

"Department" means the Iowa department of natural resources.

"Holding tank for waste" means any receptacle for the retention or storage of waste pending removal for further treatment or disposal.

"Private sewage disposal systems" means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of fewer than 16 individuals on a continuing basis. "Private sewage disposal systems" includes, but is not limited to, septic tanks as defined in subrule 567—69.1(2); holding tanks for waste; and impervious vault toilets, portable toilets, and chemical toilets as described in 567—69.15(455B).

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or from a holding tank, when the system is cleaned or maintained.

"Tank" means any container which is placed on a vehicle to transport waste removed from a private waste facility.

"Toilet unit" means a portable or fixed tank or vessel holding untreated human waste without secondary wastewater treatment which is emptied for disposal. "Toilet unit" does not include a portable or fixed tank or vessel holding untreated human waste that is part of a recreational vehicle or marine vessel.

"Vehicle" means a device used to transport a tank, including a trailer.

"Waste" means human or animal excreta, water, scum, sludge, septage, and grease solids from private sewage disposal.

567—68.3(455B) Licensing requirements. Commercial septic tank cleaners must annually apply for and obtain a license from the department before engaging in the commercial cleaning of and disposal of septage from any private sewage disposal system in the state of Iowa. The license period will run from July 1 to June 30 of the following year. The owner of a septic tank may clean the owner's own tank without being licensed if all other requirements of this chapter are met.

567—68.4(455B) Licensing procedures.

68.4(1) Application for license. A commercial septic tank cleaner must apply for a license by completing a form provided by the department and submitting it with an annual waste management plan and the license fee to the Department of Natural Resources, License Bureau, Henry A. Wallace Building, 502 E. 9th Street, Des Moines, Iowa 50319. In the case of a commercial septic tank cleaner which is a corporation, partnership, association or any other business entity, the entity itself must apply as provided in this rule. The entity shall designate one person, such as a partner, officer, manager, supervisor, or other full-time employee, to act as its representative for the purpose of applying for a license. Individuals employed by a commercial septic tank cleaner business are not required to be licensed, but each cleaning unit (vehicle or tank) must have the license number (except for the year) displayed and a copy of the current license with the cleaning unit.

68.4(2) Waste management plan. The applicant must submit as a part of the application a septage disposal management plan. The plan must also be submitted to the county board of health in each county where septage is to be land-applied. The plan shall include:

a. The volume of septage expected to be collected from private sewage disposal facilities.

b. The volume of septage to be taken to permitted publicly owned treatment works.

c. A letter of acceptance from any publicly operated treatment works where waste is proposed to be disposed.

d. The location and area of all sites where septage is to be land-applied.

e. The anticipated volume of septage applied to each site.

f. The type of crop to be planted on each site and when the crop is to be planted.

g. The type of application to be used at each site.

h. A list of vehicles to be registered.

i. The previous year's record of disposal as required in subrule 68.6(3) and subparagraph 68.10(2)"c"(4).

Allowance may be made in the plan for septage application on the property of the owner of the tank being pumped as

long as disposal standards of this chapter are met. A license will be issued only after approval of the waste management plan. If the plan is not approved, it must be modified and resubmitted.

68.4(3) License fee. The initial license application and each renewal application must be accompanied by a nonrefundable fee in the form of a check or money order made payable to the Department of Natural Resources. The application fee is $150 per year for the first registered vehicle and $50 for each additional vehicle. If the applicant intends to land-apply any septage during the year, there will be an additional application fee of $7 per 1,000 gallons of septage to be land-applied per year. Land application fees shall be based on the previous year's records. First-time applicants shall pay a $300 annual land application fee if they propose to land-apply. New license applicants will be charged monthly prorated fees until the next June 30.

68.4(4) License renewal. In order to remain valid, a commercial septic tank cleaner license must be renewed by June 30 of each year. Renewal application must be made on a form provided by the department, and must be received by the department or postmarked at least 30 days prior to the expiration date. The renewal application form must be accompanied by the license fee specified in subrule 68.4(3), a copy of all waste disposal records as defined in 68.6(3) for the previous year, and a revised waste management plan.

68.4(5) Change in ownership. Within 30 days of the change in ownership of any commercial septic tank cleaner, the new owner shall furnish the department with the following information:

a. Name of business and license number;

b. Name, address, and telephone number of new owner; and

c. Date the change in ownership took place and any change in the waste management plan. The license will transfer with the ownership with no additional fee due until the next renewal date.

68.4(6) Change in address. Within 30 days of any change in the address or location of the business, information regarding such change must be reported to the department.

68.4(7) Alteration of waste management plan. An amended waste management plan must be submitted before any new property for land application not listed on the existing plan is used or waste is taken to a publicly operated treatment works not listed on the plan.

567—68.5(455B) Suspension, revocation and denial of license.

68.5(1) Basis for suspension, revocation, and denial. The department may suspend, revoke, or deny a commercial septic tank cleaner license for any of the following reasons:

a. A material misstatement of facts in a license application.

b. Failure to provide the adequate license fee.

c. Failure to provide and adhere to an approved waste management plan.

d. Failure to satisfy the obligations of a commercial septic tank cleaner and the standards as provided in rules 68.6(455B), 68.9(455B), and 68.10(455B).

e. Failure to pay any fines assessed under 68.5(2).

68.5(2) Civil penalties. The department may assess civil penalties not to exceed $250 for violations of this rule. Each day that the violation continues constitutes a separate offense.

68.5(3) Appeal. A commercial septic tank cleaner may appeal the suspension, revocation, or denial of a license under the provisions of 567—Chapter 7.

68.5(4) Reinstatement. In the case of a denial, revocation, or suspension pursuant to paragraph 68.5(1)"b" or "e," the department may immediately reinstate or issue a license after receipt of the requisite fee or fine and confirmation that the commercial septic tank cleaner is fulfilling the requirements of rules 68.6(455B) and 68.9(455B). In case of a denial, revocation or suspension pursuant to paragraph 68.5(1)"a," "c," or "d," the department may reinstate or issue a license no sooner than 60 days after the denial, revocation, or suspension if the department is satisfied that the commercial septic tank cleaner has corrected the deficiency and will comply with departmental rules in the future.

567—68.6(455B) Licensee's obligations.

68.6(1) Supervision. The licensee shall provide supervision for the removal and disposal of septage from private sewage disposal systems.

68.6(2) Standards. The licensee shall meet the standards established in this chapter for the cleaning of and disposal of septage from private sewage disposal systems.

68.6(3) Records. The licensee shall maintain records of private sewage disposal systems cleaned and the location, method of septage disposal, and volume of septage disposed of for each trip. Such records shall be maintained for a period of five years, and shall be made readily available upon request to county board of health or department officials and submitted with the waste management plan.

567—68.7(455B) County obligations. The county boards of health shall enforce the standards and licensing requirements contained in this chapter and other referenced rules relating to the cleaning of private sewage disposal systems and disposal of septage from such facilities.

567—68.8(455B) Application sites and equipment inspections. All application sites specified on the waste management plan shall be inspected annually by an agent approved by the department to ensure that the sites meet the requirements for septage disposal and are properly managed. All tank trucks and related storage and handling facilities for septage shall be inspected annually to ensure compliance with these rules. The department may contract with other entities such as the local county health department to carry out the inspections. However, the department shall retain concurrent authority to determine inspection requirements.

567—68.9(455B) Standards for commercial cleaning of private sewage disposal systems.

68.9(1) Vehicles, tanks and equipment. For all vehicles, tanks and equipment used in the commercial cleaning of private sewage disposal systems, the licensee shall:

a. Prevent the dripping, falling, spilling, leaking, or discharging of waste onto roads, rights-of-way or other public properties.

b. Provide the equipment necessary for proper cleaning of private sewage disposal systems.

c. Ensure proper construction and repair of cleaning equipment to allow easy cleaning and maintenance in an essentially rust-free and sanitary condition and appearance.

d. If septage is to be land-applied, provide a mechanism for properly mixing lime with the septage or a means to incorporate or inject the septage.

68.9(2) Septic tank cleaning. Tanks shall be emptied of all waste. Sludge may be loosened by pumping liquid back into the tank or adding dilution water. The tank does not have to be washed out with fresh water; however, no more than four inches of waste shall be left in the bottom.

68.9(3) Miscellaneous.

a. Any tanks or equipment used for hauling septage from private sewage disposal systems shall not be used for hauling hazardous or toxic wastes as defined in 567—Chapter 131 or other wastes detrimental to land application or wastewater treatment plants and shall not be used in a manner that would contaminate a potable water supply or endanger the food chain or public health.

b. Pumps and associated piping shall be installed with watertight connections to prevent leakage.

c. Agitation capability for use in cleaning private sewage disposal systems to disperse sludge and scum into the liquid for proper cleaning shall be provided.

d. All vehicles shall display the license number (except for the year) assigned to the commercial septic tank cleaner with three-inch or larger letters and numbers on the side of the tank or vehicle.

e. The name and address of the license holder shall be prominently displayed on the side of the tank or vehicle in letters at least three inches high.

f. A direct connection shall not be made between a potable water source and the tank or equipment on the vehicle.

567—68.10(455B) Standards for disposal. Disposal of septage from private sewage disposal systems shall be carried out in accordance with the rules established by the department.

68.10(1) Waste from toilet units shall be disposed of by discharge to a publicly owned treatment works or other permitted wastewater treatment system with the treatment works owner's approval.

68.10(2) Septage from septic tanks or other types of private sewage disposal systems that normally discharge effluent for further treatment (such as mechanical/aerobic treatment tanks, siphon tanks or distribution boxes) shall be disposed of by utilizing one or more of the following methods:

a. Septage shall be discharged to a publicly owned treatment works or other permitted wastewater treatment system with the treatment works owner's approval.

b. Septage shall be discharged to permitted septage lagoons or septage drying beds with the septage system owner's approval.

c. Septage shall be land-applied in accordance with the following requirements:

(1) The maximum application rate is 30,000 gallons of septage per acre of cropland per 365-day period. The nitrogen application rate shall be no more than is utilized by the crop. A crop capable of using the nitrogen applied must be grown and harvested from the site after application of the maximum annual allocation or, at a minimum, every third year.

(2) The following site restrictions shall be met when septage is applied to land:

1. Septage shall not be applied to a lawn or a home garden.

2. Septage shall not be applied to land where there is a bedrock layer or seasonal high water table within 3 feet of the soil surface. Determination of these confining layers may be ascertained by consulting the soil types noted in the county USDA soil surveys.

3. Land application sites shall have soil pH maintained above 6.0, unless crops prefer soils with lower pH conditions. If the soil pH is below 6.0, it is acceptable to use agricultural lime to increase the pH to an acceptable level. Soil pH shall be measured and reported as part of the annual waste management plan.

4. The septage shall not be applied to ground that has greater than 9 percent slope.

5. If application on frozen or snow-covered ground is necessary, it shall be limited to land areas of less than 5 percent slope and application rates of less than 2,500 gallons per acre per day.

6. Septage shall not be applied to land that is 35 feet or less from an open waterway. If septage is applied within 200 feet of a stream, lake, sinkhole or tile line surface intake located downgradient of the land application site, it shall be injected or applied to the surface and mechanically incorporated into the soil within 48 hours of application.

7. If the septage is applied to land subject to flooding more frequently than once in ten years, the septage shall be injected or shall be applied to the surface and mechanically incorporated into the soil within 48 hours. Information on which land is subject to flooding more frequently than once in ten years is available from the department.

8. Septage shall not be applied within 750 feet of an occupied residence, except the residence of the owner of the septic tank that was pumped, nor within 500 feet of a well.

9. Crop harvesting restrictions:

- Food crops with harvested parts that touch the septage/soil mixture and are totally above ground shall not be harvested for 14 months after application of domestic septage.
- Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of domestic septage.
- Animal feed, fiber, and those food crops with harvested parts that do not touch the soil surface shall not be harvested for 30 days after application of the domestic septage. Animals shall not be allowed to graze on the land for 30 days after application of septage.

(3) One of the following vector attraction reduction requirements shall be met when septage is applied to land:

1. Septage shall be injected below the surface of the land. No significant amount of the septage shall be present on the land surface within one hour after the septage is injected.

2. Septage applied to the land surface shall be incorporated into the soil within six hours after application to or placement on the land.

3. Septage shall be stabilized by adding and thoroughly mixing sufficient alkaline material such as hydrated or quick lime to produce a mixture with a pH of 12. For example, adding and thoroughly mixing approximately 50 pounds of lime with each 1,000 gallons of septage is usually sufficient to bring the pH to 12 for 30 minutes. A minimum of 30 minutes of contact time shall be provided after mixing the lime with the septage prior to applying to land. Each container of septage shall be monitored for compliance by testing, using a pH meter or litmus paper, two representative samples of the batch of lime-treated domestic septage taken a minimum of 30 minutes apart to verify that the pH remains at 12 or greater for the minimum 30-minute time period.

(4) When septage is applied to land, the person who applies the septage shall develop the following information and shall retain the information for five years and include it in the annually submitted waste management plan:

1. The location, by either street address or latitude and longitude, of each site on which septage is applied.

2. The number of acres and precise application area in each site on which septage is applied.

3. The gallons of septage applied each time.

4. The total gallons applied at each site to date for the year.

5. The date and time septage is applied to each site.

6. The rate, in gallons per acre, at which septage is applied to each site.

7. A description of how the vector attraction reduction requirements are met.

8. The following certification statement shall be provided with the records when the records are submitted to or requested by the department:

"I certify, under penalty of law, that the pathogen requirements and the vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(5) Other methods of stabilization may be acceptable if shown to be equivalent to 68.10(2)"c"(3)"3" above.

d. Septage shall be discharged (with owner approval) to a permitted sanitary landfill in accordance with 567—Chapters 102 and 103 and the following requirements:

(1) Septage shall be stabilized by adding and thoroughly mixing sufficient lime to produce a mixture with a pH of 12.

(2) A minimum of 30 minutes of contact time shall be provided after mixing the lime with the septage prior to discharging to the landfill.

These rules are intended to implement Iowa Code section 455B.172.

ITEM 2. Amend rule 567—69.17(455B) as follows:

Amend the introductory paragraph as follows:

567—69.17(455B) Disposal of septage from onsite wastewater treatment and disposal systems.

69.17(1) The collection, storage, transportation and disposal of all septage shall be carried out in accordance with the requirements in 567—Chapter 68.

Rescind existing subrule **69.17(1)**.

[Filed 8/25/06, effective 11/1/06]
[Published 9/27/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/06.

ARC 5410B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby adopts new Chapter 93, "Conduit Derivative Transactions," Iowa Administrative Code.

This new chapter provides standards for aggregated derivative transactions among affiliates in an insurance company holding system that involves a domestic insurer, provides standards for conduit derivative transactions between a conduit and external qualified counterparties, and defines which aggregated derivative transactions are not subject to the notification requirements in Iowa Code section 521A.5(1).

Notice of Intended Action was published in the August 2, 2006, Iowa Administrative Bulletin as **ARC 5279B**. The adopted rules have been modified from the rules published under Notice as follows: (1) a definition of "domestic insurer" has been added in rule 191—93.2(511,521A); and (2) new rule 191—9.8(511,521A) has been added, clarifying that the chapter shall not apply to any conduit that is not engaging in aggregated derivative transactions with a domestic insurer.

A public hearing was held at the offices of the Insurance Division at 10 a.m. on August 23, 2006. Both oral and written comments in favor of the new chapter were received.

These rules will become effective November 1, 2006.

These rules are intended to implement Iowa Code sections 511.8(22)"b," 521A.2(1) "c," and 521A.2(3) as amended by 2006 Iowa Acts, Senate File 2364.

The following amendment is adopted.

Adopt **new** 191—Chapter 93 as follows:

CHAPTER 93
CONDUIT DERIVATIVE TRANSACTIONS

191—93.1(511,521A) Purposes. The purposes of these rules are to set standards for aggregated derivative transactions among affiliates in an insurance company holding system, to set standards for conduit derivative transactions between a conduit and external qualified counterparties, and to define which aggregated derivative transactions and conduit derivative transactions are not subject to the provisions of Iowa Code section 521A.5(1)"b," "c"(3), and "e."

191—93.2(511,521A) Definitions. For purposes of this chapter, the following definitions shall apply:

"Affiliate," or "affiliate of" a specific person, means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Aggregated derivative transaction" means a derivative transaction entered into between any affiliate within an insurance holding company system and a conduit, which transaction may be aggregated by the conduit with other derivative transactions between the conduit and other affiliates within the insurance holding company system and replicated by the conduit with qualified counterparties. An aggregated derivative transaction does not include an individual derivative transaction between an insurer and a conduit subject to Iowa Code section 521A.5(1)"b."

"Conduit" means a corporation, limited liability company, partnership or other similar form of business organization within an insurance holding company system which engages in the business of conduit derivative transactions.

"Conduit derivative transaction" means a derivative transaction entered into between a conduit and a qualified counterparty that is not within the conduit's insurance holding company system and that replicates one or more aggregated derivative transactions.

"Control" means the same as defined in Iowa Code section 521A.1(3).

"Custodian bank" means the same as defined in Iowa Code section 511.8(21)"a"(2).

"Derivative" means an agreement, option, instrument, or any series or combination of agreements, options, or instruments that provides for either of the following:

1. To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu of such delivery or relinquishment; or

2. Which has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

"Derivative" includes options, warrants not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures and any other agreements, options or instruments substantially similar thereto or any series or combination thereof.

INSURANCE DIVISION[191](cont'd)

"Derivative transaction" means a transaction based upon a derivative.

"Domestic insurer" means the same as defined in Iowa Code section 521A.1(4).

"Insurance holding company system" means the same as defined in Iowa Code section 521A.1(5).

"Person" means the same as defined in Iowa Code section 521A.1(7).

"Qualified counterparty" means:

1. A qualified exchange;

2. A transaction entered into with, or guaranteed by, a business entity with an investment grade rating by the National Association of Insurance Commissioners (NAIC) Securities and Valuation Office or by a majority of nationally recognized statistical rating organizations (NRSRO), on the NAIC/NRSRO list, that rate the business entity;

3. A qualified foreign exchange; or

4. A derivative instrument issued or written by, or entered into with, the issuer of the underlying interest on which the derivative instrument is based.

"Qualified exchange" means the same as defined in rule 191—49.2(511).

"Qualified foreign exchange" means the same as defined in rule 191—49.2(511).

191—93.3(511,521A) Provisions not applicable.

93.3(1) Iowa Code section 521A.5(1)"b" shall not be applicable to an aggregated derivative transaction or to a conduit derivative transaction that complies with this chapter.

93.3(2) Iowa Code section 521A.5(1)"c"(3) shall not be applicable to an aggregated derivative transaction or to a conduit derivative transaction that complies with this chapter.

93.3(3) Iowa Code section 521A.5(1)"e" shall not be applicable to an aggregated derivative transaction or to a conduit derivative transaction that complies with this chapter.

191—93.4(511,521A) Standards for conduit derivative transactions.

93.4(1) Documentation. The conduit shall maintain documentation and records relating to each conduit derivative transaction that shall include, but not be limited to, documentation setting forth:

a. The purpose or purposes of the transaction;

b. The specific derivative instrument used in the transaction;

c. For over-the-counter derivative instrument transactions, the name of the qualified counterparty and the counterparty exposure amount calculated not less than quarterly; and

d. For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade.

93.4(2) Trading requirements. Each derivative that is the subject of a conduit derivative transaction shall be entered into with a qualified counterparty.

191—93.5(511,521A) Internal controls.

93.5(1) Before engaging in an aggregated derivative transaction or a conduit derivative transaction, the conduit shall have established written guidelines that shall be used for effecting and maintaining such transactions.

93.5(2) The guidelines shall:

a. Address investment or, if applicable, underwriting objectives, risk constraints, and the factors considered in establishing risk constraints such as credit risk limits;

b. Address permissible transactions and the relationship of those transactions to the conduit's operations, such as a precise identification of the risks being hedged by a derivative transaction;

c. Set forth a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure; and

d. Require:

(1) Compliance with internal control procedures;

(2) That the board of directors of the conduit shall approve the guidelines and determine whether the conduit has adequate professional personnel, technical expertise and systems to implement investment practices involving derivatives;

(3) That only the board of directors of the conduit or its authorized designee may approve derivative instrument transactions;

(4) That the board of directors of the conduit or its designee exercise administrative oversight of trading functions;

(5) Periodic reporting of open positions to a responsible officer designated by the board of directors of the conduit; and

(6) That the reports set forth in rule 191—93.6(511, 521A) be filed with the Iowa insurance commissioner as required.

191—93.6(511,521A) Reporting requirements for conduit derivative transactions.

93.6(1) Reporting frequency. The conduit shall report conduit derivative transaction activities quarterly to the Iowa insurance commissioner.

93.6(2) Contents of reports. The conduit shall report conduit derivative transaction activities consistent with Schedule DB reporting requirements as prescribed by the accounting practices and procedures manual of the National Association of Insurance Commissioners.

191—93.7(511,521A) Conduit ownership. A conduit shall be wholly owned within the insurance holding company system that utilizes the conduit for aggregated derivative transactions and conduit derivative transactions.

191—93.8(511,521A) Exemption from applicability. This chapter shall not apply to any conduit that is not engaging in aggregated derivative transactions with a domestic insurer.

These rules are intended to implement Iowa Code sections 511.8(22)"b," 521A.2(1)"c," and 521A.2(3) as amended by 2006 Iowa Acts, Senate File 2364.

[Filed 9/8/06, effective 11/1/06]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/06.

ARC 5412B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 4, "Discipline," Iowa Administrative Code.

These amendments change wording to clarify the respondent's obligation to initiate proceedings for license reinstatement and clarify the process for notice of proceedings.

These amendments were published in the Iowa Administrative Bulletin on August 2, 2006, as **ARC 5262B**. These amendments are identical to those published under Notice.

NURSING BOARD[655](cont'd)

These amendments will become effective November 1, 2006.

These amendments are intended to implement Iowa Code chapters 17A, 147, 152 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 4.11(2) to read as follows:

4.11(2) ~~Proceedings for reinstatement shall be initiated by the respondent by making application for licensure reinstatement with the board~~ *The respondent shall initiate proceedings for licensure reinstatement by making application to the board*. The application shall be docketed in the original case in which the license was revoked, suspended or voluntarily surrendered and shall be subject to the same rules of procedure as other contested cases before the board. The person filing the application for reinstatement shall immediately serve a copy upon the attorney for the state of Iowa and shall in the same manner serve any additional documents filed in connection with the application.

ITEM 2. Amend subrule 4.16(2) to read as follows:

4.16(2) Notification shall be in writing delivered either by personal service as in civil actions or by *restricted* certified mail with return receipt requested. When ~~the licensee~~ *service* cannot be ~~located~~ *accomplished in such a manner*:

a. An affidavit shall be prepared outlining the measures taken to attempt service and shall become a part of the file when a notice cannot be delivered by personal service or certified mail, return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the licensee. The newspaper will be selected by the executive director or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

ITEM 3. Amend subrule 4.31(3) to read as follows:

4.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 4.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit ~~or~~ *from* a person with personal knowledge of each such fact attached to the motion.

[Filed 9/8/06, effective 11/1/06]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/06.

ARC 5411B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts an amendment to Chapter 42, "Adjustments to Computed Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXIX, No. 2, p. 93, on July 19, 2006, as **ARC 5255B**.

Rule 701—42.30(422) is adopted as a result of 2006 Iowa Acts, Senate File 2409, which provides for a school tuition organization tax credit.

This rule is identical to that published under Notice of Intended Action.

This rule will become effective November 1, 2006, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This rule is intended to implement 2006 Iowa Acts, Senate File 2409, section 1.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [42.30] is being omitted. This rule is identical to that published under Notice as **ARC 5255B**, IAB 7/19/06.

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